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STATE DOCUMENTS

TRANSCRIPT OF PROCEEDINGS
MONTANA CONSTITUTIONAL CONVENTION

March 7, 1972
to
March 10, 1972

Vol. VII

Convention Hall
State Capitol
Helena, Montana

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1 MONTANA CONSTITUTIONAL CONVENTION

2 March 7, 1972 39th Convention Day Convention Hall
3 9:10 o'clock A.M. Helena, Montana
4

5 PRESIDENT GRAYBILL: The Convention will come to
6 order. If you'll all arise, Mr. Arness will lead us in the
7 Pledge of Allegiance this morning.

8 DELEGATES WITH DELEGATE ARNESS: I pledge allegiance
9 to the Flag of the United States of America, and to the
10 republic for which it stands, one nation, under God, indivis-
11 ible with liberty and justice for all.

12 PRESIDENT GRAYBILL: This morning, Veronica
13 Sullivan will lead us in our Invocation.

14 VERONICA SULLIVAN: Almighty God, we thank you for
15 the privilege of being here. Give us the insight to make
16 this the best possible document for our and succeeding gener-
17 ations of Montana. Help us to help each other and always
18 remember to be kind and thoughtful, Amen.

19 PRESIDENT GRAYBILL: We'll take attendance this
20 morning on the voting machines. All present, vote Aye.

21 CLERK HANSON: Mr. President, may Delegate Arbanas,
22 Belcher, Bugbee, Berthelson be excused please?

23 PRESIDENT GRAYBILL: Yes.

24 CLERK HANSON: Delegate Delaney, Delegate Drum, Dele-
25 gate Furlong, Delegate Nutting, Delegate Monroe, Delegate

1 Delaney, Delegate Drum, Delegate Furlong, Delegate Nutting.

2 CHAIRMAN GRAYBILL: Would you read the absentees
3 again?

4 CLERK HANSON: Delegate Delaney, Delegate Drum,
5 Delegate Furlong, Delegate Nutting, Delegate Romney.

6 PRESIDENT GRAYBILL: Very well, please take the
7 ballot.

8	Aasheim	- Present	Brown	- Present
9	Anderson, J.	- Present	Bugbee	- Absent
10	Anderson, O.	- Present	Burkhardt	- Present
11	Arbanas	- Absent	Cain	- Present
12	Arness	- Present	Campbell	- Present
13	Aronow	- Present	Cate	- Present
14	Artz	- Present	Champoux	- Absent
15	Ask	- Present	Choate	- Present
16	Babcock	- Present	Conover	- Present
17	Barnard	- Present	Cross	- Present
18	Bates	- Present	Dahood	- Present
19	Belcher	- Absent	Davis	- Present
20	Berg	- Present	Delaney	- Absent
21	Berthelson	- Present	Driscoll	- Present
22	Blaylock	- Present	Drum	- Absent
23	Blend	- Present	Eck	- Present
24	Bowman	- Present	Erdmann	- Present
25	Brazier	- Present	Eskildsen	- Absent

1	Etchart	- Present	Mahoney	- Present
2	Felt	- Present	Mansfield	- Present
3	Foster	- Present	Martin	- Present
4	Furlong	- Absent	McCarvel	- Present
5	Garlington	- Present	McDonough	- Present
6	Graybill	- Present	McKeon	- Present
7	Gysler	- Present	McNeil	- Present
8	Habedank	- Present	Melvin	- Present
9	Hanson, R. S.	- Present	Monroe	- Present
10	Hanson, R.	- Present	Murray	- Present
11	Harbaugh	- Present	Noble	- Present
12	Harlow	- Present	Nutting	- Absent
13	Harper	- Present	Payne	- Present
14	Harrington	- Present	Pemberton	- Present
15	Heliker	- Present	Rebal	- Present
16	Holland	- Present	Reichert	- Present
17	Jacobsen	- Present	Robinson	- Present
18	James	- Present	Roeder	- Present
19	Johnson	- Present	Rollins	- Present
20	Joyce	- Present	Romney	- Absent
21	Kamhoot	- Present	Rygg	- Present
22	Kelleher	- Present	Scanlin	- Present
23	Leuthold	- Present	Schiltz	- Present
24	Loendorf	- Present	Siderius	- Present
25	Lorello	- Present	Simon	- Present

1	Skari	- Present	Van Buskirk	- Present
2	Sparks	- Present	Vermillion	- Present
3	Speer	- Present	Wagner	- Present
4	Studer	- Present	Ward	- Present
5	Sullivan	- Present	Warden	- Present
6	Swanberg	- Present	Wilson	- Present
7	Toole	- Present	Woodmansey	- Present

8 CLERK HANSON: Mr. Furlong is present. Mr. President,
9 ninety-one delegates present, five excused and four absent.

10 PRESIDENT GRAYBILL: Very well. A quorum is present.
11 Order of Business Number One, Reports of Standing Committees?

12 CLERK HANSON: None, sir.

13 PRESIDENT GRAYBILL: Order of Business Number Two,
14 Reports of Select Committees?

15 CLERK HANSON: None.

16 PRESIDENT GRAYBILL: Order of Business Number Three,
17 Communications?

18 CLERK HANSON: Helena, Montana, March 7, 1972, Honor-
19 able Leo Graybill, Jr., President, Montana Constitutional
20 Convention, Capitol, Helena, Montana. Dear Mr. President:
21 In accordance with the provisions of Section Fifteen (2)
22 Extraordinary Senate Bill Number Six, Chapter Extraordinary
23 Number One, Laws of Montana 1971, the licenses of the follow-
24 ing lobbyists have been suspended as of March 7, 1972 for
25 failure to file statements of expense within the period

1 specified by law: 32-72 Gene Tuma, 58-72 Roy G. Crosby, 69-72
2 Maurice Mokahey, 84-72 Joe Curtis. The suspension of Gerald
3 McCurdy reported to you on February 22, 1972 is still in ef-
4 fect. Sincerely yours, Frank Murray, Secretary of State.

5 PRESIDENT GRAYBILL: Very well. We have another
6 matter on communications this morning. Mrs. Warden is here
7 who has a presentation to make to the convention.

8 Mrs. Warden.

9 DELEGATE WARDEN: I come to you this morning with a
10 special scroll from the Great Falls, Montana Advertising Club
11 for claiming the Charles M. Russell month. The proclamation
12 was signed by Governor Anderson and also by Mayor McLaughlin
13 of the City of Great Falls. Whereas Charles Marion Russell,
14 world famous cowboy artist, belongs to all Montanans. No
15 other man has brought more recognition to the state of Montana
16 and to the field of western Art, than Charles M. Russell.
17 The Montana Historical Society has dedicated most of its
18 gallery's face to the display of Russell's art. And that the
19 Charles M. Russell auction of original western art, held
20 each March in Great Falls, home of the C. M. Russell Gallery
21 and the original studio, is becoming the leading auction of
22 its kind in the United States, and whereas March 19th marks
23 the birthday of Charles M. Russell. Now I, therefore, Forrest
24 Anderson, Governor of the State of Montana and John J. McLaugh-
25 lin, Mayor of the City of Great Falls, do hereby join together

1 in proclaiming March, 1972 the second state-wide Charles M.
2 Russell month in Montana, and encourage all areas of the state
3 to honor this celebrated Montanan. I come to you this morning
4 to present the scroll. One will be given to each of you, and
5 I will give one to Mr. Graybill. It is altogether fitting
6 and proper that he receive this scroll beneath one of the
7 finest pictures that Charlie Russell ever did. I take great
8 pleasure in doing this, and I know that your inspiration can
9 always come from that beautiful picture behind us.

10 PRESIDENT GRAYBILL: They wanted to take a picture,
11 but I do want to thank Mrs. Warden and the advertising club
12 on behalf of the convention. I am sure that all of us here
13 have received inspiration daily in being able to view Charlie
14 Russell's marvelous picture behind me. The only real dis-
15 advantage to being president that I've found so far is that
16 I don't get to see the picture very much. Thank you very
17 much, Mrs. Warden. We appreciate that and I'm sure each of
18 the delegates will appreciate their copy. Now, we also have
19 one other honor this morning. We have with us in the chamber,
20 Miss Indian America. Would you please come forward? Miss
21 Indian America is a junior at Brigham Young University major-
22 ing in sociology. Come right on up here with me. She has
23 taken a year off to perform her duties as Miss Indian America,
24 and she hopes eventually to get into an occupation of radio
25 and TV. We awfully happy to have you here with us this morn-

1 ing. Have you something you'd like to say to us?

2 MISS INDIAN AMERICA: I'd like to thank those, in be-
3 half of my Indian nation, those people that are trying to help
4 our people on the Indian reservations because we need a lot
5 of help. I'd like to tell you a little bit about my reserva-
6 tion back on the Navajo reservation. Sometimes when you
7 travel across the Navajo reservation, you may see a hogan
8 sitting out there in the middle of no where. To the side of
9 the hogan, you may see a shack. Around the hogan, barrels
10 of water, piles of wood, a sheep corral, a wagon, sometimes a
11 pick-up. Out in the distance, our father hauling water for
12 his family. Out into another distance, a small child herding
13 the sheep. The sheep gives him meat, clothing and his bedding.
14 Along with him, he's dragging a little pup, trying to teach
15 the slow pup how to herd the sheep so that just in case he
16 left home to fulfill his dream, that this pup might take care
17 of the sheep. A little Indian child dreams for things. He
18 wants better things for his people, better education. So, I
19 hope that most of you will realize this, that we all have
20 dreams -- dreams to better our people, to improve our land,
21 because we have so much pride with what we have. I thank
22 you. (Applause)

23 PRESIDENT GRAYBILL: You may be seated. We're very
24 happy, Miss Indian America, that you could be with us this
25 morning and be in Montana. We Montanans are proud of our

1 seven reservations and many tribes. Most of us in this room
2 have many friends among the Indians. We certainly appreciate
3 your coming here and talking with us, and we wish you well
4 on your year's reign as Miss Indian America. Thank you very
5 much. Very well, Order of Business Number Four, Introduction
6 and Reference of Delegate Proposals? None. Order of Busi-
7 ness Number Five, Final Consideration of Proposals? The
8 Chair would like to announce that General Government One and
9 Two is on final consideration. However, we have made arrange-
10 ments this morning that whenever a report has passed the
11 Committee of the Whole, we're having it printed so that the
12 final draft will be on your desk. Unless I hear objection,
13 we'll pass final consideration of General Government One and
14 Two this morning because, by tomorrow morning, you'll have
15 the text on your desks as amended in the Style and Drafting
16 debate in the Committee of the Whole. Probably beginning
17 tomorrow, we will be passing those that reach final consider-
18 ation. Order of Business Number Six, Adoption of Proposed
19 Constitution?

20 CLERK HANSON: None.

21 PRESIDENT GRAYBILL: Order of Business Number Seven,
22 Motions and Resolutions? Pardon me, Mr. Mahoney, do you have
23 a --

24 DELEGATE MAHONEY: I have a motion.

25 PRESIDENT GRAYBILL: Very well.

1 DELEGATE MAHONEY: Mr. President. I ask that we
2 reconsideration our action in adopting Resolution Number
3 Eleven and resubmit it back to the Rules Committee for some
4 further discussion.

5 PRESIDENT GRAYBILL: Very well. Do you want to give
6 the reason for that, Mr. Mahoney?

7 DELEGATE MAHONEY: Yes, Mr. President. I would like
8 to discuss some information that I have received this morn-
9 ing in going over to the purchasing agent's office. I'd like
10 to have the convention know that I went down there of my own
11 free will. A fellow called me this morning about 7:00 o'clock
12 in regard to this matter. I might state that I wonder if we
13 go out here -- As I understand from them, there are two
14 different sizes of this. One will cost approximately ten
15 thousand dollars less than the other. If this size that we
16 adopted the other day goes, it will cost twelve cents to mail
17 it, and the other size will cost only eight cents. Now, I
18 know this is a county clerk and recorder's proposal. I'd
19 like to discuss it with the Rules Committee. This is the
20 only thing I'd like to have, Mr. President.

21 PRESIDENT GRAYBILL: Very well. The Chair would
22 like to say that you did not bring that matter to the Chair's
23 attention. The Chair and the Rules Committee have discussed
24 it. There are committees making those decisions. We have
25 not accepted the bids yet, and we do have some information

1 that perhaps you don't have about the situation. Now, if the
2 body cares to reconsider it, it may. I would recommend against
3 it. Is there further discussion?

4 Mr. Murray.

5 DELEGATE MURRAY: Mr. President. I hate to rise and
6 discuss this matter because I'm the chairman of the Rules
7 Committee and it would be within my province to have this
8 matter reconsidered. However, I note that the motion for re-
9 consideration was not properly phrased by the words, having
10 voted on the prevailing side. I also note that under Rule
11 Sixty-six, motions for reconsideration, that any delegate
12 who voted on the prevailing side may move for a reconsideration
13 of any question at the same session day of the convention.
14 It thus appears to me that in actuality, the motion is out
15 of order. I would be more than pleased to discuss this matter
16 with Mr. Mahoney, in detail, as I have carried the burden of
17 the investigation of this matter and the discussion with the
18 purchasing department and a printer, and the secretary of
19 state's office and others involved.

20 PRESIDENT GRAYBILL: What rule did you refer to, Mr.
21 Murray?

22 DELEGATE MURRAY: Rule Sixty-six, Mr. President.

23 PRESIDENT GRAYBILL: Rule Sixty-six says any dele-
24 gate who voted on the prevailing side, may move for a recon-
25 sideration of any question at the same session day of the

1 convention, or may give notice that he will make such a motion
2 not later than the next succeeding session day. Mr. Mahoney,
3 no notice having been given, I'm going to rule your motion
4 out of order. I am going to suggest that the Rules Committee
5 meet with you and I would be happy to meet with you to discuss
6 the matter. I think we ought to handle it that way.

7 DELEGATE MAHONEY: Mr. President. Being as you've
8 ruled this out of order, I think it's very highly irregular
9 when this was handled the other evening at the very end of
10 business. Practically the only discussion was given by the
11 chairman of the Rules Committee. This information has just
12 come. I think if we have a rule that says that you can't
13 come back the next morning -- Now, I understood at this time
14 of the rules, that the reconsideration had to be done in the
15 Committee of the Whole the day before it left. But, if we
16 have written the thing that you can't go on the next succeed-
17 ing time and have, and ask for it, I certainly think our rules
18 need changing.

19 PRESIDENT GRAYBILL: That may be, Mr. Mahoney. I
20 will be glad to talk to you about it. I'm sure the Rules Com-
21 mittee, to whom this duty has been assigned, will be glad to
22 talk to you about it. But, I'm going to rule you out of order
23 on your reconsideration of Resolution Number Eleven. Are
24 there other motions or resolutions? Unfinished Business,
25 Order of Business Number Eight?

1 CLERK HANSON: None, sir.

2 PRESIDENT GRAYBILL: Number Nine, Special Orders of
3 the Day?

4 CLERK HANSON: None.

5 PRESIDENT GRAYBILL: Number Ten, General Orders of
6 the Day?

7 DELEGATE MURRAY: Mr. President.

8 PRESIDENT GRAYBILL: Mr. Murray.

9 DELEGATE MURRAY: I move that the Convention resolve
10 itself into Committee of the Whole for consideration of busi-
11 ness under General Orders.

12 PRESIDENT GRAYBILL: The motion is to resolve this
13 Convention into Committee of the Whole for consideration of
14 business under General Orders. All in favor, say Aye.

15 DELEGATES: Aye.

16 PRESIDENT GRAYBILL: Opposed, No.

17 (No response)

18 PRESIDENT GRAYBILL: So ordered.

19 (Committee of the Whole)

20 CLERK HANSON: Mr. President. The Style and Drafting
21 Committee Proposal Number Four, having been duplicated and
22 placed on the delegates' desks on the 3rd day of March, 1972
23 at 9:00 o'clock A.M., is now in compliance with Rule Twenty-
24 three of the Montana Constitutional Convention Rules. March
25 7, 1972, the following committee proposals are now on General

1 Orders: Bill of Rights, Education, Public Health, Local Gov-
2 ernment, General Government, Style and Drafting Number Three,
3 Style and Drafting Number Four. Mr. President.

4 CHAIRMAN GRAYBILL: Very well. This morning on
5 General Orders, we'll take up Style and Drafting legislature
6 first.

7 Mr. Schiltz.

8 DELEGATE SCHILTZ: Mr. Chairman, Members of the Com-
9 mittee. The Style and Drafting problem with the legislative
10 article is probably the most difficult we're going to face be-
11 cause we have two articles. However, they are more or less
12 uniform except for sections one, two and three and some changes
13 that were necessary because of the Habedank amendment which
14 provided that in 1980, there would be a plebiscite on the sub-
15 ject. If the people voted to go bicameral, we would have to
16 have some article to work from. Now, that's assuming that
17 we're unicameral from the adoption of the constitution until
18 1980. So, I'll be making references to that, and I think it
19 would be best to work from page ten. Mr. Chairman. I move
20 that when this committee does arise and report after having
21 had under consideration section one of Report Number Three
22 of the Style and Drafting Committee, it recommend the same
23 do pass. Mr. Chairman.

24 CHAIRMAN GRAYBILL: Mr. Schiltz.

25 DELEGATE SCHILTZ: There should be no difficulty with

1 section one. We made a small change in style only.

2 CHAIRMAN GRAYBILL: All right. If everyone will turn
3 to page ten so you can follow us. Is there any discussion of
4 section one? If not, you've heard the report of the committee
5 chairman that this be adopted. All in favor, say Aye.

6 DELEGATES: Aye.

7 CHAIRMAN GRAYBILL: Opposed, No.

8 (No response)

9 CHAIRMAN GRAYBILL: It's adopted. Section two.

10 DELEGATE SCHILTZ: Mr. Chairman. I move that when
11 this committee does arise and report after having had under
12 consideration section two of Report Number Three of the Style
13 and Drafting Committee, it recommend the same do pass. Mr.
14 Chairman.

15 CHAIRMAN GRAYBILL: Mr. Schiltz.

16 DELEGATE SCHILTZ: Again, style only. We used the
17 word smaller instead of, not less, and larger. Otherwise, no
18 substantive changes, only style.

19 CHAIRMAN GRAYBILL: Is there any discussion on sec-
20 tion two? This is the unicameral legislative body. If not,
21 all in favor of adopting section two, as amended, say Aye.

22 DELEGATES: Aye.

23 CHAIRMAN GRAYBILL: Opposed, No.

24 (No response)

25 CHAIRMAN GRAYBILL: It's adopted.

1 DELEGATE SCHILTZ: Mr. President. I move that when
2 this committee does arise and report after having had under
3 consideration section three of Report Number Three of the
4 Style and Drafting Committee, it recommend the same do pass.
5 Mr. Chairman.

6 CHAIRMAN GRAYBILL: Mr. Schiltz.

7 DELEGATE SCHILTZ: We have a typo on page three. We
8 struck terms in the caption, but if you will note, we kept
9 terms in back in the final printed version which precedes
10 this. There is one problem here so far as substance is con-
11 cerned. That's the problem of a senator who is elected for
12 a four-year term, and has two still to run, if in 1980 there
13 is a reapportionment, he might have that left over. The
14 Style and Drafting Committee wrote this in such a way, and
15 it's our impression, that that senator would be out of a job.
16 If there's any problem there, that's somewhat substantive,
17 you ought to face it right now. In short, we think the legal
18 consequence is that you would have a brand new legislature
19 and that that particular senator would be out.

20 CHAIRMAN GRAYBILL: How has that been adjusted in
21 section three?

22 DELEGATE SCHILTZ: We didn't do anything with it,
23 but I raise it because it's somewhat of an anomalous situation
24 in the language we had. I'm just raising it so that the con-
25 vention will be aware that that is what the apparent intention

1 is. We faced it because it appeared to us that it was a hole
2 in the operation and we didn't take it upon ourselves to spell
3 it out one way or another. I'm just telling you that a man
4 with two years yet to serve, in the event of a reapportionment,
5 so far as we're concerned is probably out of a job.

6 CHAIRMAN GRAYBILL: Mrs. Reichert, I believe you
7 were in charge of this part of the article when it was adopted.
8 Do you see the problem that he is talking about?

9 DELEGATE REICHERT: Yes, I do. Originally, in the
10 first proposal we considered, there were two-year terms, so
11 this problem would have been nonexistent. We didn't deal
12 with staggered terms when the committee first considered the
13 terms of the members. However, with the four-year staggered
14 terms, I can see and I wish that it could be worked out some-
15 how in the language here so that it would be clear.

16 CHAIRMAN GRAYBILL: Mr. Aasheim.

17 DELEGATE AASHEIM: Mr. President. I don't believe
18 there's any problem here because we have it happening today
19 in our present constitution, and the court rulings have made
20 it that if a senator is districted out, his term is expired.
21 If he is in his district and has two years to go, he remains.
22 I believe that has been the ruling so far, so I don't see
23 any problem here. I thought about this when we were drawing
24 the article, that the court orders would take care of this
25 in reapportionment. I do have a question here on the word,

1 senator. I don't believe you made the correction back on page
2 twenty-one, did you? Suppose we do go back in 1980 to a bi-
3 cameral, would the word senator be adequate?

4 DELEGATE SCHILTZ: On one, two and three, I don't
5 know -- is that the first time we used senator?

6 DELEGATE AASHEIM: Yes.

7 DELEGATE SCHILTZ: If you'll look at page --

8 DELEGATE AASHEIM: It would apply to a senator but
9 not a representative.

10 DELEGATE SCHILTZ: Just a minute. Section fifteen
11 incorporates the Habedank amendment. Look at page seventeen,
12 where we put section one in --

13 DELEGATE AASHEIM: I see it now. You're all right.

14 DELEGATE SCHILTZ: -- section three. We converted,
15 in other words. I don't think there's any trouble, Mags,
16 with section one, or two or three -- with three.

17 CHAIRMAN GRAYBILL: Apparently, it's handled different-
18 ly, Mr. Aasheim, when we get to the bicameral. Is there other
19 discussion about section three of Article Five of the uni-
20 cameral?

21 Mr. Harper.

22 DELEGATE HARPER: Didn't this already happen once in
23 reapportionment? This same issue was faced and I think the
24 decision was made that everybody had to run again. Wouldn't
25 that be the logical assumption once again? I don't see any

1 problem if we leave the wording just as it is.

2 CHAIRMAN GRAYBILL: That was Mr. Aasheim's point.
3 Very well. All in favor of section three as amended by Style
4 and Drafting, please say Aye.

5 DELEGATES: Aye.

6 CHAIRMAN GRAYBILL: Opposed, No.

7 (No response)

8 CHAIRMAN GRAYBILL: It's adopted. Section four.

9 DELEGATE SCHILTZ: I move that when this committee
10 does arise and report after having had under consideration
11 section four of the Style and Drafting Committee Report Num-
12 ber Three, it recommend the same do pass. Mr. Chairman.

13 CHAIRMAN GRAYBILL: Mr. Schiltz.

14 DELEGATE SCHILTZ: We made mostly style changes, but
15 we did do some guessing. If you look at line twenty-two and
16 a half, you'll find that we substituted the words, general
17 election, where the report that came off the floor just said,
18 one year preceding the next election. That could have meant
19 primary, and that's a substantive change, I guess. We put
20 general in there in any case and we carried it on. Down be-
21 low on the two lines subsequent, the committee report did show
22 general election, so we made the two conform. Otherwise --
23 let me see, I've got some notes here. We rephrased this and
24 this is the way we assumed the intent was. We provide that
25 if a county is more than one district, you must be a resident

1 of the county for six months. If there are several counties
2 in the district, you must be a resident of the district six
3 months. We spelled that out and we assumed that was the in-
4 tent of the Committee of the Whole.

5 CHAIRMAN GRAYBILL: Very well. You can see that
6 on line twenty-two, the word general has been added to make
7 it conform with line twenty-three. The wording has been re-
8 arranged but the sense is still there, that they must be a
9 resident of the county if it contains one or more districts,
10 or of the district if it contains all or parts of more than
11 one county. Is there any question about section four? Any
12 debate or discussion?

13 Mr. Habedank.

14 DELEGATE HABEDANK: No debate, Mr. President, but I
15 would like to ask a question just so it gets clarified into
16 the record. Reading section four with the first line of
17 section fourteen on page fifteen, I assume that there is no
18 question reading those two, that the person that resides in
19 the county if it contains more than one district, will not be
20 voted upon by the entire electorate of the county, but only
21 by the members of the district in the event he files in a
22 district in which he does not reside. Is that correct?

23 CHAIRMAN GRAYBILL: Mr. Schiltz.

24 DELEGATE SCHILTZ: I don't see any problem with it,
25 but I'll take another reading on it. It doesn't say anything

1 about who shall vote. That particular section only talks
2 about who is qualified as a legislative candidate. That
3 may come up someplace else, Otto, I don't know.

4 CHAIRMAN GRAYBILL: Mr. Kelleher.

5 DELEGATE KELLEHER: I drafted the original language,
6 Mr. Chairman, and that was my intent, Mr. Habedank -- just
7 exactly the way you've stated it.

8 CHAIRMAN GRAYBILL: Is there further discussion of
9 section four? If not, all in favor of section four as amended,
10 say Aye.

11 DELEGATES: Aye.

12 CHAIRMAN GRAYBILL: Opposed, No.

13 (No response)

14 CHAIRMAN GRAYBILL: It's adopted. Section five.

15 DELEGATE SCHILTZ: I move that when this committee
16 does arise and report after having had under consideration
17 section five of Report Number Three of the Style and Drafting
18 Committee, it recommend the same do pass. Mr. Chairman.

19 CHAIRMAN GRAYBILL: Mr. Schiltz.

20 DELEGATE SCHILTZ: Now, here's a small problem that
21 I raised when I first started to talk. We only made style
22 changes except that instead of member of the legislature --
23 remember, this is the unicameral section -- we used the term
24 senator. We did it advisedly because in section one, it's
25 recited that the legislature shall be one chamber whose members

1 are designated senators. So, we attempted to carry senators
2 throughout. Now, if in 1980, we should go to bicameral having
3 already been in unicameral, then senator is not an appropriate
4 word. It was the decision of the committee to use senator
5 throughout in that situation even though it wouldn't be an
6 appropriate word after 1980, but to correct it in the trans-
7 ition article that will be at the end of the entire constitu-
8 tion. Some of the -- Mr. Harris particularly -- He has
9 talked with me and with my staff and with Mr. Aasheim, would
10 prefer to continue to use the words members or members of the
11 legislature whenever that appears. I call it to your attention;
12 it's your decision to make. I have no strong feelings about
13 it either way.

14 CHAIRMAN GRAYBILL: Do I understand you to mean, Mr.
15 Schiltz, that in the transition article, you would provide
16 that in the event in 1980, we changed, then the wording would
17 change at that time?

18 DELEGATE SCHILTZ: No, my intent would be to say in
19 the transition article that, in the event we went to bicameral
20 after 1980, that the term senator meant members of the legis-
21 lature or member of the legislature.

22 CHAIRMAN GRAYBILL: Mr. Aasheim.

23 DELEGATE AASHEIM: Would Mr. Schiltz yield to a
24 question?

25 CHAIRMAN GRAYBILL: Mr. Schiltz.

1 DELEGATE SCHILTZ: Yes.

2 DELEGATE AASHEIM: Jack, I wonder -- Instead of try-
3 ing to reword, rephrase the unicameral proposal, how would it
4 be to say that the bicameral proposal would go into operation
5 in 1980?

6 DELEGATE SCHILTZ: The trouble with that is, we will
7 then have to print in the constitution, as finally adopted
8 after the people adopt it -- If we have unicameral, we'll
9 have a whole bunch of worthless language in there that says
10 bicameral. So, we've attempted, by altering sections one,
11 two, three, ten thirteen and fourteen, I guess, incorporating
12 them at length, so that the printed constitution will be
13 just exactly what it is. There will also be something in the
14 transition article that says that the attorney general shall
15 make a constant review of updating the constitutional lang-
16 uage for things that don't become operative for one reason
17 or another, and this would be one of them. After 1980, the
18 prints of the constitution would provide, if it went back to
19 unicameral -- we're making two assumptions here, that the
20 people take unicameral and we're assuming that they reject
21 it in 1980. One or more of them might be unreasonable, but
22 in the transition, we will provide that the attorney general
23 will continue to update and then it wouldn't be overburdened
24 with bicameral language, or unicameral language.

25 DELEGATE AASHEIM: I have another question. The

1 problem of doing a lot of printing would be in 1980, is that
2 what you mean?

3 DELEGATE SCHILTZ: There's no problem this year.
4 We have to print it all anyway.

5 DELEGATE AASHEIM: The problem would be in 1980?

6 DELEGATE SCHILTZ: The problem would be having a
7 constitution in the beginning of all the statute books, that
8 had a terribly cumbersome, long article that didn't pertain
9 anymore.

10 CHAIRMAN GRAYBILL: Mrs. Reichert.

11 DELEGATE REICHERT: Mr. Chairman. I have the con-
12 stitutional amendment of the state of Nebraska that initiated
13 the unicameral. I noticed that throughout this amendment,
14 they do not refer to senators; they refer to members of the
15 legislature. I'm inclined to agree that instead of substituting
16 the word senators, such as in section five, we retain
17 the original language, each member of the legislature. I
18 think it would be simpler in the event that we do revert back
19 to bicameral, and I see no point in using the word senators,
20 except in the original section one that the members shall be
21 designated senators.

22 CHAIRMAN GRAYBILL: Mr. Delaney, do you wish to
23 show your presence?

24 DELEGATE DELANEY: Yes, sir.

25 CHAIRMAN GRAYBILL: Very well. Mr. Delaney is here.

1 Mr. Aasheim.

2 DELEGATE AASHEIM: I shall move, Mr. President, that
3 we retain the original language, member of the legislature.

4 CHAIRMAN GRAYBILL: All right. The motion has been
5 made that we use the language, members of the legislature.
6 I take it that then should be the case in section two and
7 section three, no?

8 DELEGATE SCHILTZ: It's already taken care of in
9 section three in the bi -- in section fifteen.

10 CHAIRMAN GRAYBILL: All right. It's only then in
11 section five so far?

12 DELEGATE SCHILTZ: No, it's going to be in sections
13 five, six, eight, nine, ten -- no, ten's fixed -- eleven and
14 seventeen.

15 CHAIRMAN GRAYBILL: Very well. The issue is whether
16 to use the term, members of the legislature, or senator. The
17 motion has been made by Mr. Aasheim to make it members of the
18 legislature or member, as it will appear later. Is there
19 discussion about which term you want to use? Very well. All
20 in favor of Mr. Aasheim's motion that we use the words, members
21 of the legislature, say Aye.

22 DELEGATES: Aye.

23 CHAIRMAN GRAYBILL: Opposed, No.

24 (No response)

25 CHAIRMAN GRAYBILL: Very well. The Ayes have it.

1 DELEGATE AASHEIM: You should strike the word sen-
2 ator too.

3 CHAIRMAN GRAYBILL: All right. So, that means we
4 shall strike the word senator in section five and will use
5 the words, each member of the legislature. Is that correct,
6 Mr. Schiltz?

7 DELEGATE SCHILTZ: Right.

8 CHAIRMAN GRAYBILL: Very well. Is there other dis-
9 cussion on section five?

10 DELEGATE SCHILTZ: We're on four. No, we're on
11 five; I'm sorry.

12 CHAIRMAN GRAYBILL: All in favor of adopting section
13 five as amended, say Aye.

14 DELEGATES: Aye.

15 CHAIRMAN GRAYBILL: Opposed, No.

16 (No response)

17 CHAIRMAN GRAYBILL: The Ayes have it. Section six.

18 DELEGATE SCHILTZ: I'm sorry. We have a sub two.
19 We were only talking about sub one there.

20 CHAIRMAN GRAYBILL: Five, sub two now.

21 DELEGATE SCHILTZ: Mr. Chairman. I move that when
22 this committee does arise and report after having had under
23 consideration section five, sub two, of the Style and Drafting
24 Committee Report Number Three, it recommend the same do pass.
25 Mr. Chairman.

1 CHAIRMAN GRAYBILL: Mr. Schiltz.

2 DELEGATE SCHILTZ: This is predominantly a style
3 change. It isn't very long, but I should note that we changed
4 this to the elected members of the legislature, which would
5 also obtain for elected members of each of the other depart-
6 ments of government. It wasn't clear in the original report,
7 so it would read: to recommend compensation for the judiciary
8 and elected members of the legislative and executive depart-
9 ments. The idea was that we weren't sure, and we didn't
10 think that it was intended, that everybody in the legislative
11 branch -- the chief clerk, etc., -- all the employees in the
12 twenty departments should be part of this compensation com-
13 mission.

14 CHAIRMAN GRAYBILL: Very well. Is there question
15 about subsection two? The change made by Style and Drafting
16 is to the effect that it applies only to the elected members
17 of the legislative and executive departments. Very well. All
18 in favor of subsection two of section five, say Aye.

19 DELEGATES: Aye.

20 CHAIRMAN GRAYBILL: Opposed, No.

21 (No response)

22 CHAIRMAN GRAYBILL: It's adopted. Now, section six.

23 DELEGATE SCHILTZ: Mr. Chairman. I move that when
24 this committee does arise and report after having had under
25 consideration section six of Report Number Three of the Style

1 and Drafting Committee, it recommend the same do pass. Mr.
2 Chairman.

3 CHAIRMAN GRAYBILL: Mr. Schiltz, I wonder if you
4 would now incorporate in your motion the change.

5 DELEGATE SCHILTZ: I will.

6 CHAIRMAN GRAYBILL: Right.

7 DELEGATE SCHILTZ: Mr. Chairman. I move that on
8 line eight, the word senators be changed to members, and on
9 line seventeen, the word members be changed to senators.

10 CHAIRMAN GRAYBILL: All in favor of that motion,
11 say Aye.

12 DELEGATES: Aye.

13 CHAIRMAN GRAYBILL: Opposed.

14 (No response)

15 CHAIRMAN GRAYBILL: So ordered.

16 DELEGATE SCHILTZ: Otherwise, we only have rather
17 minor style changes in that particular section. I move that
18 when this committee does arise and report after having had
19 under consideration section six of Report Number Three of the
20 Style and Drafting Committee, that it recommend the same do
21 pass as amended.

22 CHAIRMAN GRAYBILL: Is there discussion of section
23 six?

24 Mr. Aasheim.

25 DELEGATE AASHEIM: Mr. President. We have a problem

1 here again on line eight and on line seventeen. The word
2 senators is used.

3 CHAIRMAN GRAYBILL: We just did that, Mr. Aasheim.
4 We just changed that by voice vote.

5 DELEGATE AASHEIM: Oh, I'm sorry. On section six?

6 CHAIRMAN GRAYBILL: Yes. We just changed it from
7 senators to members by voice vote. You have good concentration,
8 Mr. Aasheim. Are there other suggestions on section six?
9 If not, all in favor of adopting section six, say Aye.

10 DELEGATES: Aye.

11 CHAIRMAN GRAYBILL: Opposed, No.

12 (No response)

13 CHAIRMAN GRAYBILL: It's adopted. Section seven.

14 DELEGATE SCHILTZ: Mr. Chairman. I move that when
15 this committee does arise and report after having had under
16 consideration section seven of Style and Drafting Report Num-
17 ber Three, it recommend the same do pass.

18 CHAIRMAN GRAYBILL: Mr. Schiltz.

19 DELEGATE SCHILTZ: There are no changes in section
20 seven.

21 CHAIRMAN GRAYBILL: All in favor of adopting section
22 seven, say Aye.

23 DELEGATES: Aye.

24 CHAIRMAN GRAYBILL: Opposed, No.

25 (No response)

1 CHAIRMAN GRAYBILL: It's adopted. Section eight.

2 DELEGATE SCHILTZ: Mr. Chairman. I move when this
3 committee does arise and report after having had under con-
4 sideration section eight of Style and Drafting Committee
5 Report Number Three, it recommend the same do pass. Mr. Chair-
6 man.

7 CHAIRMAN GRAYBILL: Mr. Schiltz.

8 DELEGATE SCHILTZ: There are no vital changes. On
9 line twenty-seven and a half, the word senator should be
10 changed to member.

11 CHAIRMAN GRAYBILL: All in favor of changing --

12 DELEGATE SCHILTZ: Wait a minute, maybe I have
13 another change. No, that's all.

14 CHAIRMAN GRAYBILL: All in favor of changing senator
15 to member, say Aye.

16 DELEGATES: Aye.

17 CHAIRMAN GRAYBILL: Opposed.

18 (No response)

19 CHAIRMAN GRAYBILL: So ordered.

20 DELEGATE SCHILTZ: Otherwise, we just changed the
21 wording in this. As you will recall in suffrage and elections,
22 we had this same problem as proposed by Mr. Leuthold. We
23 changed the language here, which is possibly a substantive
24 change, to conform to section six of the suffrage and election
25 article. In other words, it contemplates freedom from arrest

1 while going to or coming from the election itself. I recommend
2 it pass as amended.

3 CHAIRMAN GRAYBILL: This is to conform with the
4 General Government language?

5 DELEGATE SCHILTZ: Yes, General Government, suffrage
6 and elections.

7 CHAIRMAN GRAYBILL: Is there discussion of section
8 eight? All in favor of adopting section eight, say Aye.

9 DELEGATES: Aye.

10 CHAIRMAN GRAYBILL: Opposed, No.

11 (No response)

12 CHAIRMAN GRAYBILL: It's adopted as amended. Sec-
13 tion nine.

14 DELEGATE SCHILTZ: Mr. Chairman. I move to amend
15 section nine on the Style and Drafting Report, at line nine,
16 by striking senator and inserting in lieu thereof, member.

17 CHAIRMAN GRAYBILL: All in favor of changing senator
18 to member, say Aye.

19 DELEGATES: Aye.

20 CHAIRMAN GRAYBILL: Opposed. Mrs. Reichert, is
21 that all right?

22 DELEGATE REICHERT: Mr. Chairman, I was just going
23 to suggest that perhaps we should say a member of the legis-
24 lature.

25 DELEGATE SCHILTZ: I don't resist it very hard, but

1 they can't be a member of anything else under the legislative
2 article, I wouldn't think.

3 CHAIRMAN GRAYBILL: Mrs. Reichert, we've used
4 members several times, because we used member of the legis-
5 lature the first time. Do you want to go back and change all
6 the other ones?

7 DELEGATE REICHERT: In some cases, I think it would
8 be better, but in this case particularly. In some instances
9 in sections, we mentioned judiciary and executive departments.
10 I know that this is exclusively the legislative article, but
11 still I think it's much clearer to say a member of the legis-
12 lature in this case.

13 CHAIRMAN GRAYBILL: Mrs. Reichert, you've got to
14 make a motion or else I have to make it for you. You tell
15 me what you want to do and we'll make it.

16 DELEGATE REICHERT: I move that in section nine,
17 line nine, we change the word senator to member of the legis-
18 lature.

19 CHAIRMAN GRAYBILL: Mrs. Reichert has moved that we
20 change it to member of the legislature. Is there discussion?
21 All in favor, say Aye.

22 DELEGATES: Aye.

23 CHAIRMAN GRAYBILL: Opposed, No.

24 DELEGATES: No.

25 CHAIRMAN GRAYBILL: The Chair is in doubt. We'll

1 vote on that. All in favor, vote Aye on the voting machines.
2 All opposed, vote No. We have a close one. Have all the
3 delegates voted? Any delegate wish to change his vote? Very
4 well. Thirty-nine having voted Aye, twenty-eight having
5 voted No, we'll use member of the legislature. Go ahead, Mr.
6 Schiltz.

7 DELEGATE SCHILTZ: As to section nine -- I guess
8 I haven't made a motion. I move that when this committee
9 does arise and report after having had under consideration
10 section nine, as amended, that it recommend the same do pass.
11 Mr. Chairman.

12 CHAIRMAN GRAYBILL: Mr. Schiltz.

13 DELEGATE SCHILTZ: We completely rewrote this.
14 There's no real change in substance. If you want to check
15 the substance, we don't think there's any. I see Mr.
16 Aasheim standing up. I guess he must have some problem.

17 CHAIRMAN GRAYBILL: Mr. Aasheim.

18 DELEGATE AASHEIM: Mr. President. There is a
19 change here that I think we should be aware of. In our orig-
20 inal draft, we said no legislator shall, during the time for
21 which he is elected, be appointed to any civil office under
22 the authority of the state of Montana created during such
23 time. You agreed to change that originally, but there are
24 some disturbed people in regards to making this change. I
25 have assured them that a person could be a legislator and

1 serve as an advisor, or be on a board of some sort. I believe
2 Mrs. Speer -- is Mrs. Speer here today? She had been con-
3 cerned about this matter that a person will be denied the
4 right of serving in an honorary capacity with the present
5 wording. I think we should probably discuss that. Is that
6 the intent?

7 DELEGATE SCHILTZ: I heard you emphasize the word,
8 created, and I don't find that anywhere. This is the sort of
9 thing we're dealing with, but I don't see the word created
10 during his term of office anywhere.

11 DELEGATE AASHEIM: That was in the original, Jack.

12 DELEGATE SCHILTZ: Well, it didn't come from the
13 Committee of the Whole that way.

14 DELEGATE AASHEIM: No, the Committee of the Whole
15 adopted the present section seven of the constitution. So,
16 this is not any of your fault at all. I just wonder if it's
17 understood by the group what we have done here.

18 CHAIRMAN GRAYBILL: Mr. Aronow.

19 DELEGATE ARONOW: May I ask either Mr. Schiltz or
20 Mr. Aasheim a question? Under this section nine, would a
21 member of the legislature be prohibited from holding a reserve
22 commission in the military service?

23 DELEGATE SCHILTZ: We talked about that and we de-
24 cided that we had to take the sense of what was given to us,
25 and it made no reservation about military commissions. We

1 then referred to what they're doing in the national congress
2 and had some little information that Senator Goldwater and
3 some of those people are required to resign their commissions,
4 or there's some talk about their doing it. So, we just put
5 it in the way it was. It's a substantive change we didn't
6 take upon ourselves to make.

7 CHAIRMAN GRAYBILL: Is there other discussion of
8 section nine?

9 Mr. Habedank.

10 DELEGATE HABEDANK: I would like to ask a question
11 of Mr. Schiltz. In section nine, as Mr. Aasheim has pointed
12 out, on line four, it says, during the term for which he has
13 been elected, be appointed to any civil office under the
14 state. Now, that would prevent a legislator from being ap-
15 pointed a district judge or any other officer during the
16 term for which he is elected as I would interpret it. Where
17 in your rewritten change, do you have this covered? As I
18 read your rewrite, he could not hold an office but it does
19 not seem to prevent him from being appointed to that office
20 during that term.

21 DELEGATE SCHILTZ: For one thing, we didn't know
22 what, under the state, meant. We decided that it was an im-
23 precise term that had no real legal consequences. We could
24 find none, so we deleted that. I agree with Mr. Habedank that,
25 as of this moment, no member of the legislature during his

1 term and until that term has run completely out, can be ap-
2 pointed to the bench, and probably not appointed or run for
3 anything else. I don't know; this is the way we got it.

4 CHAIRMAN GRAYBILL: Mr. Drum, the journal may show
5 your presence now, so you may vote.

6 Mr. Davis.

7 DELEGATE DAVIS: Mr. President. I am concerned
8 about the prohibition against holding the office if it applies
9 to a member of the reserve component of the armed forces.
10 We think more in terms of the higher elective offices, but if
11 you strike out city alderman, county commissioners, county
12 offices and the many other offices, it seems to me that this
13 may be more restrictive than we really mean for it to be. We
14 may not have given this enough consideration.

15 CHAIRMAN GRAYBILL: Mr. Schiltz.

16 DELEGATE SCHILTZ: I think if Mr. Davis and all
17 the rest of you that are concerned about reserve officers --
18 it says any civil, federal, state, county or municipal office
19 and we specifically put civil in there to exclude that sort
20 of military thing. I overlooked that in the first --

21 DELEGATE DAVIS: Mr. President.

22 CHAIRMAN GRAYBILL: Mr. Davis.

23 DELEGATE DAVIS: For the benefit of the journal and
24 the record then, it would be the intent of this body, as I
25 understand it, that this does not restrict any member of the

1 reserve component of any branch of the armed services from
2 filling these offices, notwithstanding the militia that is
3 tagged on the end. Would that be correct, Mr. Schiltz?

4 DELEGATE SCHILTZ: I can't speak for the entire
5 body. That would be the intent of the committee, I think. If
6 you look at the comments, it might say there. No, we just
7 took care of the under the state bit.

8 CHAIRMAN GRAYBILL: Mr. Davis.

9 DELEGATE DAVIS: Mr. President. My only thought
10 is to get this in the comments or in the journal, that this
11 prohibition is not a restriction in this regard. Thank you.

12 CHAIRMAN GRAYBILL: Very well.

13 Mr. Blaylock.

14 DELEGATE BLAYLOCK: Mr. President. I'd like to ask
15 a question of someone in here if they know. Does the state
16 legislature appropriate any money to the National Guard in
17 Montana?

18 CHAIRMAN GRAYBILL: The answer to that is yes, on
19 occasions.

20 Mr. Davis.

21 DELEGATE DAVIS: Mr. President. I move that the
22 journal show that the intent of this body that this particular
23 section does not prohibit members of the armed services or
24 any reserve component thereof from being prohibited from these
25 offices.

1 CHAIRMAN GRAYBILL: Very well. Mr. Davis has just
2 made a motion in connection with section nine that the journal
3 show that it be the sense of this body that this section does
4 not prohibit those in the military reserve from holding civil
5 offices.

6 Mr. Aasheim.

7 DELEGATE AASHEIM: Won't we have to suspend the
8 rules to make this adoption? It's a substantive change.

9 CHAIRMAN GRAYBILL: We're not changing the language.
10 We're just making a note to the journal. I don't see where
11 it would need that. Mr. Davis wants to clarify this matter
12 so if it comes up in the future, and our journal was looked
13 to, it would be quite clear that this body intended this not
14 to cover limitations on reserve officers from holding these
15 other offices. There's no substantive change.

16 DELEGATE AASHEIM: The question arises in my mind,
17 are we going to allow a legislator to serve in a capacity
18 as an advisor to some board which has no compensation? Would
19 he be denied that?

20 CHAIRMAN GRAYBILL: The issue now -- I think you
21 have an interesting point, but the issue now is whether or
22 not -- The issue now is on Mr. Davis' motion to have the
23 journal show that it does not apply to military reserve of-
24 ficers or personnel. Is there other discussion of Mr. Davis'
25 point? All in favor of Mr. Davis' motion, say Aye.

1 DELEGATES: Aye.

2 CHAIRMAN GRAYBILL: Opposed, No.

3 (No response)

4 CHAIRMAN GRAYBILL: It's adopted and the journal may
5 so show. Now, Mr. Aasheim, did you want to complete your
6 point?

7 DELEGATE AASHEIM: It's okay the way it stands,
8 as far as I'm concerned, but I just wanted everyone to be
9 sure that they understand what we're doing. Do you want to
10 deny a legislator the right to serve in some advisory capacity
11 in which he might be well informed, and might be valuable to
12 the state (Inaudible -- speaker trouble). Why should he be
13 denied that right?

14 CHAIRMAN GRAYBILL: Turn off Mr. Aasheim's mike
15 please.

16 DELEGATE HABEDANK: I move to amend section nine
17 on line nine following the word, not, by inserting the fol-
18 lowing words, be appointed to nor. This would make the sent-
19 ence then read, during the term for which he is elected, a
20 member of the legislature shall not be appointed to nor hold
21 any federal, state, county or municipal office. I change
22 no other wording.

23 CHAIRMAN GRAYBILL: Just a minute. I'm trying to
24 fix the journal, Mr. Habedank. All right, now you may speak.
25 Mr. Habedank has proposed an amendment to line nine of section

1 nine to add the words, be appointed to nor, so that it would
2 read: A member of the legislature shall not be appointed to
3 nor hold any civil office.

4 Mr. Habedank.

5 DELEGATE HABEDANK: I --

6 CHAIRMAN GRAYBILL: Use your mike now, Mr. Habedank.

7 DELEGATE HABEDANK: Mr. President. The reason
8 for this amendment is that, as I construe it, the wording of
9 the Style and Drafting Committee leaves out the disqualificat-
10 ion which was contained in section nine as originally adopted.
11 As I would read it, as rewritten, it would permit a member
12 of the legislature during his term of office -- he would have
13 to resign but -- during his term, he could be appointed to
14 be district judge. He could be appointed to any other civil,
15 federal, state, county or municipal office, although he
16 could not hold both offices. I think this body should make
17 a specific determination. I do not know whether they were
18 aware of what was concerned previously, but I think we should
19 specifically decide on this thing so no question could arise
20 in the future.

21 CHAIRMAN GRAYBILL: Very well. The Chair under-
22 stands the sense of Mr. Habedank's amendment to be, to limit
23 appointments during a term in office to members of the leg-
24 islature. In other words, the members of the legislature
25 cannot be appointed to some other office and resign his leg-

1 islative office and take the new office under the section nine
2 as we originally adopted it, because of the word appointed
3 on line four was struck out. Mr. Habedank is merely making
4 this conform to that. If this body doesn't want to do that,
5 now is the time to change it, but that's the sense of Mr.
6 Habedank's amendment. Is that correct, Mr. Habedank?

7 DELEGATE HABEDANK: That's correct.

8 CHAIRMAN GRAYBILL: Under this amendment, a person
9 cannot get appointed to some other office and then resign
10 his legislative duties.

11 Mr. Davis.

12 DELEGATE DAVIS: I think you probably clarified
13 my question to Mr. Habedank, but would you yield to a question,
14 Mr. Habedank?

15 CHAIRMAN GRAYBILL: Mr. Habedank.

16 DELEGATE HABEDANK: I yield.

17 DELEGATE DAVIS: If you were elected to a four-
18 year term, you could not then hold any other office, even if
19 you did resign, during that term. Is that your understanding?

20 DELEGATE HABEDANK: I could hold another office,
21 but I could not be appointed to it. I could resign and run
22 for it. I had this called to my attention very strongly while
23 I was on the Revision Commission by Bill Speer, who wanted to
24 be appointed as district judge in Yellowstone County and
25

1 thought he could be appointed as district judge, but because
2 of this prohibition in the constitution, he couldn't even
3 resign his office and then be appointed. He was prohibited
4 from being appointed to the office of district judge during
5 the term for which he was elected. I, at that time, thought
6 it was a little ridiculous, and I still think it's a little
7 ridiculous, but I think we should have the matter completely
8 cleared up. I'm not in favor of the prohibition that I have
9 put in my amendment. I'm against it, but I think we should
10 decide it.

11 CHAIRMAN GRAYBILL: For your information, when we
12 debated it the other day, I recall the point being made that
13 the reason is to prohibit the governor or someone else from
14 offering a job to a legislator in order to get something done,
15 and then have him resign and appoint him to an office. That
16 is the purpose of the language, and the language that has been
17 proposed does clear up section nine, as amended. You have
18 to decide now what to do.

19 Mr. Schiltz.

20 DELEGATE SCHILTZ: I don't think Mr. Habedank cured
21 the problem that he's talking about, because if you can't
22 hold the office, the same rule still applies as the one he
23 thinks he's curing. That applies throughout his four-year
24 term, if he's a senator and has two years to go.

25 CHAIRMAN GRAYBILL: Mr. Habedank.

1 DELEGATE HABEDANK: I hate to disagree with Mr.
2 Schiltz, but the difference as I look at it, he could not hold
3 his office and serve in another office. But, with the pro-
4 hibition as it was originally written in, he couldn't resign
5 his office which he doesn't hold, and then be appointed dur-
6 ing that term for which he was elected.

7 DELEGATE SCHILTZ: Mr. Chairman. We're not talking
8 about holding his legislative office. We're saying, accord-
9 ing to the amendment, shall not be appointed to nor hold any
10 of these other offices.

11 CHAIRMAN GRAYBILL: Very well.

12 Mrs. Babcock.

13 DELEGATE BABCOCK: May I ask Mr. Schiltz a question,
14 Mr. President?

15 CHAIRMAN GRAYBILL: Mr. Schiltz.

16 DELEGATE SCHILTZ: Yes, indeed.

17 DELEGATE BABCOCK: Would this conflict with the
18 executive article in regard to a candidate running for office
19 while he has another office?

20 DELEGATE SCHILTZ: I'm not clear. Do you have a
21 particular section in mind?

22 DELEGATE BABCOCK: Maybe Mr. Joyce could help me
23 out.

24 CHAIRMAN GRAYBILL: Mr. Joyce.

25 DELEGATE JOYCE: Mr. Chairman. As I recall, we

1 specifically provided in the executive article, and this was
2 passed by the Committee of the Whole, that a holder of an
3 elected executive office could run for another office during
4 his term.

5 DELEGATE SCHILTZ: Do you have the section, Tom?

6 CHAIRMAN GRAYBILL: One answer to your question,
7 Mrs. Babcock, is that this applies to members of the legis-
8 lature and not to the executive.

9 DELEGATE BABCOCK: Our intent, Mr. President, was to
10 try to have them all be the same throughout the legislative,
11 judicial and executive. I have the information he wanted.

12 DELEGATE SCHILTZ: Five, sub two?

13 DELEGATE BABCOCK: Yes, five, sub two on page eleven
14 of the executive article.

15 DELEGATE SCHILTZ: It particularly -- I don't know
16 who we are who wanted them all the same, but five sub two
17 says that somebody in the executive department may be a can-
18 didate for any public office during his term. This says that
19 a legislator -- the intent was, as I recall, that nobody
20 could give the legislator a bribe of any kind, or a hidden
21 bribe by offering him a judgeship or any other job. Whether
22 it's valid, I don't know. We did it the way it was, but I
23 do want to be very clear that Mr. Habedank's amendment doesn't
24 cure the problem that would allow Mr. Speer to resign and be-
25 come district judge, because it says he shall not hold any

1 office. We thought that hold office was sufficient, because
2 if he was proscribed from holding office, he couldn't very
3 well be appointed to it, or certainly he wouldn't be appointed
4 to it.

5 CHAIRMAN GRAYBILL: Mr. Aasheim.

6 DELEGATE AASHEIM: Will Mr. Habedank yield to a
7 question?

8 CHAIRMAN GRAYBILL: Mr. Habedank.

9 DELEGATE HABEDANK: I will.

10 DELEGATE AASHEIM: Your amendment would make this
11 section imply that a man could be a mayor and run for the
12 legislature, but he could not while he's in the legislature,
13 be appointed to an office. He could be a judge and run for
14 the legislature. He could hold any office and run for the
15 legislature, is that correct?

16 DELEGATE HABEDANK: Mr. Aasheim, as I would con-
17 strue this, as it is written by the Drafting Committee, --
18 I think this is a Style and Drafting measure; I just want to
19 be sure it says what we intend. During the term for which
20 he is elected, a member of the legislature shall not hold
21 any civil, federal, state, county or municipal office. That
22 would mean, to me, that if he were a mayor, he could run for
23 the legislature. If he was elected, he could resign the job
24 of mayor and serve in the legislature. If he was in the
25 legislature, he could run for governor, and if he were elect-

1 ed, he could resign and serve as governor, the way the Style
2 and Drafting Committee has it written. He could, as they
3 have it written, as I would construe it, be appointed to
4 district judge. He would have to resign from the legislature
5 to be appointed, but he could be appointed during that term.
6 If it means what it says above, I do not see where be appointed
7 to nor hold fails to cover it. I would yield to people like
8 Mr. Schiltz and Mr. Garlington and the other members of that
9 committee. The point I'm trying to create is that if we
10 mean that no one can resign from the legislature to be ap-
11 pointed to another job, it should be written or stated into
12 the record that there's no question about that being our
13 intent. I do not read what they have written as preventing
14 that.

15 DELEGATE AASHEIM: One more question. Your amend-
16 ment then reads, shall not be appointed to nor hold.

17 DELEGATE HABEDANK: That is correct. I would add
18 those words. I would also be agreeable to Style and Drafting
19 straightening that out, but I don't think they have it
20 straightened out as they have it worded now.

21 DELEGATE SCHILTZ: Mr. Chairman, I want to say one
22 more time that what Mr. Habedank's overlooks is that both
23 the language we got from the floor, and the language we wrote,
24 it says that during the term for which he is elected, no
25 senator or no member of the legislature can have one of these

1 other jobs. He overlooks the during the term for which he
2 is elected. We're only doing what it says in the beginning,
3 but saying it differently. If it's the feeling of this com-
4 mittee, that they want to make a substantive change that he
5 shall be allowed to resign during his term and accept one of
6 these other jobs, then the rules are going to have to be sus-
7 pended. As of now, we just rewrote what was in there before
8 with no substantive changes.

9 CHAIRMAN GRAYBILL: Very well. Now, the issue is
10 on Mr. Habedank's amendment to add the words, be appointed to
11 nor. Mr. Schiltz's point is, Mr. Habedank, is that since it
12 says during the term for which he is elected, you really don't
13 need to say anything about the appointment. I suppose you
14 are correct that you could be appointed and not hold. If
15 the body wants to add, be appointed, back in, they can. If
16 they don't, it really isn't too significant. Is there other
17 discussion on this particular point?

18 Mrs. Bates.

19 DELEGATE BATES: Mr. Chairman. In looking over what
20 we did while we were in debate, we reverted right back to
21 Article Five, section seven, which is the original wording.
22 It was rewritten by Style and Drafting, but it's no different
23 than what we have now. This is the way my book is marked.
24 If that's correct, it's the same thing. In our committee
25 discussion, we discussed this a great deal about being appoint-

1 ed to another office. We did feel that boards or commissions
2 or advisory councils were permitted under the present legis-
3 lature, as declared by any of the cases that have come up
4 previous.

5 CHAIRMAN GRAYBILL: Mr. Joyce.

6 DELEGATE JOYCE: Mr. Chairman. It seems to me that
7 the addition of the word, hold, by the Style and Drafting
8 Committee changed the sense of the original amendment, or
9 the original provision of the constitution that was adopted
10 by the convention in the Committee of the Whole. Section
11 nine, as originally adopted in the Committee of the Whole, is
12 identical with the current constitution. It says that no
13 senator or representative, during the term for which he shall
14 be elected -- shall have been elected -- shall be appointed
15 to any civil office under the state. The purpose of that in
16 the original constitution, and as construed historically in
17 the state of Montana, is if you're a member of the legis-
18 lature, you cannot be appointed to any other civil office
19 in the state. That means a civil office in which you're
20 elected. The courts have construed office to mean not the
21 office of the assistant attorney general or any of that sort
22 of thing, but it means an elected office. So, the purpose
23 was, in effect, and it has been traditionally construed, that
24 a member of the legislature cannot be appointed, for example,
25 to a district judgeship. Those with memories can remember

1 that Phil Duncan was a member of the senate. A vacancy came
2 in the Beaverhead judicial district and Phil Duncan was the
3 only one running for the job. He couldn't be appointed to it.
4 As a result, Governor Bonner appointed John Collins to fill
5 in the job until the election at which time Judge Duncan was
6 elected. Then to go on with the current constitution, it
7 says, and no member of congress or other person holding office
8 under the United States or this state, shall be a member of
9 either house during his continuance in office. So, it means
10 that no person holding an office under this state can be a
11 member of the house while he holds that other office. The
12 secretary of state could not serve in the house, but he could
13 resign as secretary of state and then go into the house. It
14 seems to me that the Style and Drafting amendment would
15 prohibit anyone from holding any such office, which is an
16 extension of the present constitution. I think that Mr.
17 Habedank's motion to add, be appointed to, does conform to
18 the sense of the original constitution. The addition of the
19 word, hold, is an enlargement of the additional constitution.
20 I therefore move, as a substitute to Mr. Habedank's motion --
21 I make an amendment to Mr. Habedank's motion that the word,
22 hold, be stricken so that the new section would read: During
23 the term for which he is elected, a member of the legislature
24 shall not be appointed to any civil, federal, state, county
25 or municipal office. This prohibition does not apply to a

1 notary public or a member of the malitia.

2 CHAIRMAN GRAYBILL: Mr. Joyce's substitute amendment
3 -- substitute motion -- to strike the word, hold, will be
4 allowed. We'll debate that now.

5 Mr. Joyce. Mr. Schiltz.

6 DELEGATE SCHILTZ: Would Mr. Joyce yield to a
7 question please?

8 CHAIRMAN GRAYBILL: Mr. Joyce.

9 DELEGATE JOYCE: Yes, I shall.

10 DELEGATE SCHILTZ: Mr. Joyce. Do you understand
11 from what Mr. Habedank has had to say, that it is his purpose
12 in this amendment to make it possible for a member to resign
13 during his term and be appointed to one of these offices?
14 Do you think he has accomplished this?

15 DELEGATE JOYCE: As I understand Mr. Habedank, all
16 he wants to do is to have the Style and Drafting change con-
17 form to the sense of the original constitution as written. He
18 makes the point, and I think validly in his amendment, that a
19 member of the legislature, as written, shall mean that he
20 shall not hold another office. That's the way the Style and
21 Drafting wrote it. He wants to change it to conform to say
22 that a member of the legislature shall not be appointed to any
23 office. That's the way I interpret the original constitution,
24 but it seems to me that the Style and Drafting Committee, by
25 adding the word hold, has extended -- has gone beyond what the

1 original constitutional language means, as I read it.

2 CHAIRMAN GRAYBILL: Mr. Habedank.

3 DELEGATE HABEDANK: Mr. Chairman. Mr. Schiltz has
4 misconstrued my purpose. My feeling is that a person should
5 be able to resign and be appointed, but I can see the merit of
6 the debate on the other side. The purpose of my motion was
7 to prevent a person from resigning and being appointed, rather
8 than allowing it. If it cannot be done in this method, by
9 amending the wording of the Style and Drafting Committee when
10 this thing is done, I would suggest that the wording of the
11 Style and Drafting Committee be deleted in its entirety and
12 go back to the original wording of the constitution, which
13 was the wording passed by this body and turned over to Style
14 and Drafting changing it merely so that it would read, no
15 member of the legislative assembly shall, and then making the
16 necessary amendment at the end. We would retain wording which
17 has been construed through the years, and which we understand.

18 CHAIRMAN GRAYBILL: You heard Mr. Habedank's suggest-
19 ion, Mr. Joyce. Do you still want to strike the word, hold,
20 or do you agree with him and want to go back to the original
21 language?

22 DELEGATE JOYCE: I'll withdraw my amendment to Mr.
23 Habedank's amendment if he wants to withdraw his.

24 CHAIRMAN GRAYBILL: All right, your's is withdrawn.
25 Mr. Habedank, do you want to withdraw your's and make another

1 motion that we use the original language?

2 DELEGATE HABEDANK: Yes, I would like to withdraw
3 my amendment and then I would move that section nine be amended
4 to read: No member of the legislative assembly shall contin-
5 uing the words as stricken read, during the term for which he
6 shall have been elected be appointed to any civil office under
7 the state, and no member of congress or other person holding
8 an office, except a notary public or the malitia under the
9 United States or this state, shall be a member -- and the new
10 words would be -- of the legislature in lieu of either house,
11 during his continuance in office. In other words, changing
12 it to refer to members of the legislature, we would then re-
13 tain the wording of the present constitution.

14 CHAIRMAN GRAYBILL: Very well. Mr. Habedank has
15 withdrawn his first motion and made a new motion that we sub-
16 stitute for the Style and Drafting language, the original
17 language with two changes. One, we changed the word senator
18 or representative to member of the legislature in line with
19 the amendment we had a minute ago. Second, we changed the
20 words, either house, to the legislature. Is there discussion
21 on Mr. Habedank's motion?

22 Mr. Furlong.

23 DELEGATE FURLONG: Mr. Chairman, I'm confused. Is
24 the intent of this to actually prevent appointments during
25 the term of the elected office? Was that the will of this

1 assembly during discussion? I'd really like to know before I
2 vote on this.

3 CHAIRMAN GRAYBILL: The intent of Mr. Habedank's
4 motion is to clear up what he and Mr. Joyce and some of us
5 believe is a confusion in the Style and Drafting's rewriting
6 of it, and go back to the original language and only make
7 the changes about members of the legislature. So, he wants
8 to go back to the original language, which is out of the
9 present constitution. Now, what that does is it would leave
10 it exactly the way it is. In other words --

11 DELEGATE FURLONG: Mr. Chairman.

12 CHAIRMAN GRAYBILL: Yes.

13 DELEGATE FURLONG: That's my concern. I'd like to
14 know what it is under the present constitution.

15 CHAIRMAN GRAYBILL: All right. Do any of you
16 attorneys care to tell him what it is under the present con-
17 stitution?

18 Mr. Joyce.

19 DELEGATE JOYCE: The present constitution is exactly
20 the words that are stricken out in line nine.

21 CHAIRMAN GRAYBILL: He wants to know the effect of
22 that, Mr. Joyce.

23 DELEGATE JOYCE: Well, the effect of it is that a
24 member of the legislature can't be appointed to any other of-
25 fice. If you are a member of the legislature, during the full

1 course of your term -- say you're a senator and you're just
2 newly elected; you've got three years to run and you've only
3 served sixty days. You cannot be appointed to any other of-
4 fice. You cannot be appointed secretary of state if a vacancy
5 comes there. You cannot be appointed state auditor. You
6 cannot be appointed a district judge. You cannot be appointed
7 as a supreme court judge. That has been the law of Montana
8 ever since 1890.

9 CHAIRMAN GRAYBILL: Mr. Furlong.

10 DELEGATE FURLONG: May I direct a question to Mr.
11 Joyce?

12 CHAIRMAN GRAYBILL: Mr. Joyce.

13 DELEGATE JOYCE: I yield.

14 DELEGATE FURLONG: Could you resign from the office
15 to which you were elected and then be appointed?

16 DELEGATE JOYCE: You may not. Under the present
17 constitution, you could not do that. As I remember the debate
18 here, I think it was Mr. Aronow who made the substitution on
19 his motion and it carried, to go back to the original con-
20 stitution.

21 DELEGATE FURLONG: Mr. Chairman.

22 CHAIRMAN GRAYBILL: Mr. Furlong.

23 DELEGATE FURLONG: Mr. Chairman. I think I realize
24 the reasoning for it, but we're changing the term to four years,
25 if this passes. In spite of the fact that there may be some

1 skulduggery in appointments, I would certainly hope that the
2 convention would reconsider its action. I'm not at all sure
3 that it's wise to lock elected people out of appointed posi-
4 tions. Four years is a long time to dedicate a life, and
5 there are any number of advancements that could come about in
6 which a person of great qualification could be denied a
7 service or an advancement.

8 CHAIRMAN GRAYBILL: Mr. Furlong. The Chair would
9 like to point out to you that we're dealing with the Style
10 and Drafting aspect of this. If you want to amend what we
11 did the other day, you're going to have to move to reconsider
12 and suspend the rules. Now, I'm not saying you shouldn't,
13 but I'm saying that the issue you've raised cannot be reached
14 at this time.

15 DELEGATE FURLONG: May I ask the Chair a question?

16 CHAIRMAN GRAYBILL: Yes, sir.

17 DELEGATE FURLONG: If such a motion was not forth-
18 coming, would this be the last time at which such a motion
19 could be forthcoming?

20 CHAIRMAN GRAYBILL: That's hard to say. I suppose
21 you can suspend the rules any time. You'd have to catch it
22 when the matter is before us.

23 DELEGATE FURLONG: Mr. Chairman. Would that be the
24 only method then, by suspending the rules?

25 CHAIRMAN GRAYBILL: The point is, when we adopt

1 these things in Committee of the Whole, we debate them. Then
2 we go back and adopt them, generally that same day although
3 it could be the next day. Then they go to Style and Drafting.
4 The report we're dealing with here is Style and Drafting. All
5 we can change here is Style and Drafting's style. We're not
6 supposed to change substance. We're going to, in a minute,
7 make a motion on another one of these to amend -- or to suspend
8 the rules. I don't know whether it'll pass or not, but then
9 you can reach the substance of the issue. After it goes out
10 of here, it goes on to General Orders again, and I suppose
11 you could move to suspend the rules and adopt it at that time,
12 when it's on Order of Business Number Five, but you'd have
13 to suspend the rules to do it. I'm not for or against your
14 proposition. I see your point, but I'm merely saying that
15 it can't be reached while we're debating style, so I don't
16 want to debate it.

17 DELEGATE FURLONG: I appreciate the Chair's answer.
18 What I wanted to do is be sure that there may be a later op-
19 tion.

20 CHAIRMAN GRAYBILL: Well, there probably is. Check
21 with Mr. Murray. Now, the issue is on Mr. Habedank's motion
22 to go back and use the old language as amended by the words,
23 members of the legislature, and the legislature. Does every-
24 body understand the proposition? Does anyone want it explain-
25 ed? Is there further discussion? All in favor of Mr.

1 Habedank's amendment, say Aye.

2 DELEGATES: Aye.

3 CHAIRMAN GRAYBILL: Opposed, No.

4 DELEGATES: No.

5 CHAIRMAN GRAYBILL: The Ayes have it and it's adopted
6 as amended. Now, that strikes the Style and Drafting lang-
7 uage and goes back to the old section nine language putting
8 in, members of the legislature, and putting in, the legis-
9 lature, in place of either body, either house. Are there
10 other amendments to section nine as amended? If not, Mr.
11 Schiltz, do you want me to put the motion? Members of the
12 Committee, you have before you for your consideration, section
13 nine as amended, and the recommendation of the Style and
14 Drafting Committee that when this committee arises and reports,
15 it recommend the same do pass. All in favor, say Aye.

16 DELEGATES: Aye.

17 CHAIRMAN GRAYBILL: Opposed, No.

18 (No response)

19 CHAIRMAN GRAYBILL: Very well. Section nine is
20 adopted as amended. Section ten.

21 DELEGATE SCHILTZ: Mr. Chairman. I move that when
22 this committee does arise and report after having had under
23 consideration section ten of the Style and Drafting Report
24 Number Three, it recommend the same do pass. Mr. Chairman.

25 CHAIRMAN GRAYBILL: Mr. Schiltz.

1 DELEGATE SCHILTZ: In this case, in section fifteen,
2 we have changed all the words so there's no problem if it
3 goes to bicameral after unicameral. Otherwise, this is mostly
4 style except that we added the words, for good cause shown,
5 on line twenty and a half. It was the feeling of the Style
6 and Drafting Committee that the report that came from the
7 Committee of the Whole didn't spell this out, and we thought
8 it was probably the intent that that was what should be in
9 there and so we put it in. Otherwise, all style.

10 CHAIRMAN GRAYBILL: Do I understand, Mr. Schiltz,
11 that the word senator here is all right because it'll change
12 later? Is that right?

13 DELEGATE SCHILTZ: It's changed in section fifteen
14 in the Habedank alternate amendment.

15 CHAIRMAN GRAYBILL: Very well. And the other change,
16 not substantive, on line twenty is that you've added the
17 reason, is that right?

18 DELEGATE SCHILTZ: On line twenty, we said, for
19 good cause shown, yes.

20 CHAIRMAN GRAYBILL: Is there any question or dis-
21 cussion on section ten? So many as shall be in favor of
22 adopting section ten, say Aye.

23 DELEGATES: Aye.

24 CHAIRMAN GRAYBILL: Opposed, No.

25 (No response)

1 CHAIRMAN GRAYBILL: It's adopted. Section eleven.

2 DELEGATE SCHILTZ: We're on sub two. I should have
3 read that that way. Mr. Chairman. I move when this committee
4 does arise and report after having had under consideration
5 subsection two of section ten of the Style and Drafting Report
6 Number Three, it recommend the same do pass. Mr. Chairman.

7 CHAIRMAN GRAYBILL: Mr. Schiltz.

8 DELEGATE SCHILTZ: There is nothing here except a
9 little bit of style.

10 CHAIRMAN GRAYBILL: Is there discussion of section
11 ten, sub two? Very well. So many as shall be in favor of
12 adopting section ten sub two, say Aye.

13 DELEGATES: Aye.

14 CHAIRMAN GRAYBILL: Opposed, No.

15 (No response)

16 CHAIRMAN GRAYBILL: It's adopted. Sub three.

17 DELEGATE SCHILTZ: Mr. Chairman. I move that when
18 this committee does arise and report after having had under
19 consideration section ten, sub three, of Report Number Three
20 of the Style and Drafting Committee, that it recommend the
21 same do pass. Mr. Chairman.

22 CHAIRMAN GRAYBILL: Mr. Schiltz.

23 DELEGATE SCHILTZ: Again, only style changes, and
24 all very minor.

25 CHAIRMAN GRAYBILL: Is there any discussion on sub

1 three? All in favor of adopting sub three of section ten,
2 say Aye.

3 DELEGATES: Aye.

4 CHAIRMAN GRAYBILL: Opposed.

5 (No response)

6 CHAIRMAN GRAYBILL: It's adopted. Subsection four.

7 DELEGATE SCHILTZ: Mr. Chairman. I move that when
8 this committee does arise and report after having had under
9 consideration section ten, sub four, of the Style and Drafting
10 Report Number Three, it recommend the same do pass. Mr.
11 Chairman.

12 CHAIRMAN GRAYBILL: Mr. Schiltz.

13 DELEGATE SCHILTZ: Once again, only very minor
14 style changes.

15 CHAIRMAN GRAYBILL: Any questions about sub four
16 of section ten? All in favor of adopting sub four of section
17 ten, say Aye.

18 DELEGATES: Aye.

19 CHAIRMAN GRAYBILL: Opposed, Nay.

20 (No response)

21 CHAIRMAN GRAYBILL: The Ayes have it and it's
22 adopted. Now, section eleven.

23 DELEGATE SCHILTZ: Mr. Chairman. I move, before I
24 make the other motion, that we change on line six the word,
25 senators, to members.

1 CHAIRMAN GRAYBILL: Senators to members on line six
2 of section eleven. All in favor, say Aye.

3 DELEGATE SCHILTZ: Mr. Chairman. I move when this
4 committee does arise and report after having had under consid-
5 eration section eleven, sub one as amended, that it recommend
6 the same do pass. We only have style changes here and they
7 are relatively minor.

8 CHAIRMAN GRAYBILL: Are there any negative votes
9 on making senators members? I trust there aren't. The journal
10 may so show. Try and vote a little more heartily out there.
11 It's very difficult for the Chair, when only three of you
12 vote, to figure out what's happening. Is there any dis-
13 cussion of section eleven? Very well. All in favor of section
14 eleven, say Aye.

15 DELEGATES: Aye.

16 CHAIRMAN GRAYBILL: Opposed. Marvelous.

17 (No response)

18 CHAIRMAN GRAYBILL: Adopted. Now, section eleven,
19 sub two.

20 DELEGATE SCHILTZ: Mr. Chairman. I move, on line
21 nine to amend it by striking, senator, and inserting in lieu
22 thereof, member.

23 CHAIRMAN GRAYBILL: All in favor, say Aye.

24 DELEGATES: Aye.

25 CHAIRMAN GRAYBILL: Opposed, No.

1 (No response)

2 CHAIRMAN GRAYBILL: So ordered.

3 DELEGATE SCHILTZ: Mr. Chairman. I move that when
4 this committee does arise and report after having had under
5 consideration section eleven, sub two of the Style and Draft-
6 ing Report Number Three, that it recommend the same do pass
7 as amended. Mr. Chairman.

8 CHAIRMAN GRAYBILL: Mr. Schiltz.

9 DELEGATE SCHILTZ: These are all style changes. We
10 also incorporated what had been sub three and renumbered the
11 subsections, just for sense. There's no difficulty there
12 that I should inform the body of.

13 CHAIRMAN GRAYBILL: Is there any discussion of sub
14 two? All in favor, say Aye.

15 DELEGATES: Aye.

16 CHAIRMAN GRAYBILL: Opposed, No.

17 (No response)

18 CHAIRMAN GRAYBILL: It's adopted. Sub three, Mr.
19 Schiltz.

20 DELEGATE SCHILTZ: Mr. Chairman. I move that when
21 this committee does arise and report after having had under
22 consideration section eleven, sub three of the Style and
23 Drafting Report Number Three, that it recommend the same do
24 pass. Mr. Chairman.

25 CHAIRMAN GRAYBILL: Mr. Schiltz.

1 DELEGATE SCHILTZ: This was renumbered as I noted
2 before. I've had a little conversation from a couple of
3 people on the floor this morning. We took the last three
4 lines and made a separate section of them. Now, somebody
5 mentioned to me that we move that to subsection six, as I
6 recall. The concern of the people who talked to me was that
7 this particular verbage applied only to the conditions that
8 obtained in subsection three. However, the Style and Drafting
9 Committee treated this as applying to the whole section be-
10 cause the language says, this section, on line twenty-five
11 and a half. They didn't say, this subsection, and we thought
12 it pertained to the entire section eleven. So, we moved it
13 to subsection six. If anyone has a real problem with that,
14 now is the time to tell us.

15 CHAIRMAN GRAYBILL: Mr. Schiltz, I have no problem,
16 but I don't understand you.

17 DELEGATE SCHILTZ: Well, the question that was
18 raised to me, Mr. Chairman, is that we changed substance by
19 making a separate subsection of those last three lines in
20 that, by doing so, it applies to the entire section eleven
21 including subsections one, two, three, and five.

22 CHAIRMAN GRAYBILL: What are the last few lines?
23 Are they on the next page?

24 DELEGATE SCHILTZ: A law may be challenged -- we
25 struck them there. A law may be challenged on the grounds of

1 noncompliance with this section, it said. If it said, this
2 subsection, we would have left it the way it was. Because it
3 said, this section, we conceived that to mean section eleven.
4 So, we made a separate subsection of it as having a different
5 subject.

6 CHAIRMAN GRAYBILL: Is there discussion?

7 Mr. McNeil.

8 DELEGATE McNEIL: Mr. Chairman. I believe that this
9 is a substantive change and that the only place this two-year
10 limitation was discussed in the Committee of the Whole per-
11 tained to this subsection three. I, therefore, move to amend
12 the Style and Drafting subsection three by reinstating that
13 last sentence that was stricken, and changing the word section
14 to read subsection. The last sentence, lines twenty-four
15 through twenty-six on page thirteen would read: A law may
16 be challenged on the grounds of noncompliance with this sub-
17 section within two years after its effective date, but not
18 after that period.

19 CHAIRMAN GRAYBILL: The Chair is still in a high
20 state of confusion. I'm discussing subsection three of the
21 Style and Drafting report on lines thirteen through sixteen.

22 DELEGATE McNEIL: Yes, Mr. Chairman.

23 DELEGATE SCHILTZ: Mr. Chairman.

24 CHAIRMAN GRAYBILL: Yes, sir.

25 DELEGATE SCHILTZ: We struck -- that's a mistake,

1 that sub three -- the first sub three you come to. Then go
2 down to sub four which has been struck and --

3 CHAIRMAN GRAYBILL: In other words, the words, on
4 final passage the vote shall be taken by the -- that should
5 be stricken?

6 DELEGATE SCHILTZ: No. Start at line twenty-four.
7 A law may be challenged on the grounds of noncompliance.

8 CHAIRMAN GRAYBILL: Yes, I see that.

9 DELEGATE SCHILTZ: That we struck entirely and made
10 subsection six of it.

11 CHAIRMAN GRAYBILL: Yes, I understand. What did
12 you do with lines thirteen through sixteen?

13 DELEGATE SCHILTZ: Nothing. As rewritten, they are
14 part of subsection two. We made a mistake by not striking
15 that sub three up there.

16 CHAIRMAN GRAYBILL: Oh, the sub three should be
17 stricken.

18 DELEGATE SCHILTZ: Well, it is struck on the origin-
19 al front three pages.

20 CHAIRMAN GRAYBILL: I see. So the words, upon final
21 passage the vote shall be taken by Ayes and Nays is part of
22 subsection two, right?

23 DELEGATE SCHILTZ: That's right. That's part of
24 subsection two.

25 CHAIRMAN GRAYBILL: Now, I want to inquire of the

1 body if anybody wants to reopen subsection two after seeing
2 the lines fourteen through sixteen.

3 Mr. Cate.

4 DELEGATE CATE: Mr. Chairman. I would simply
5 raise the question with Style and Drafting, if we really need
6 that sentence, on final passage the vote shall be taken by
7 Ayes and Nays and the names entered in the journal.

8 DELEGATE SCHILTZ: It's still in there.

9 CHAIRMAN GRAYBILL: It's part of subsection two.

10 DELEGATE CATE: Do we need it, because we've al-
11 ready got a recorded vote on every substantive question in
12 the legislature, and certainly final passage is a substantive
13 question.

14 DELEGATE SCHILTZ: It's a substantive question if
15 you take it out, Mr. Chairman.

16 CHAIRMAN GRAYBILL: Mr. Cate, if the Chair may --
17 It seems to the Chair that those words were passed by us and
18 I don't see how we can take them out of here. I suppose there
19 is a difference between recording the vote and taking it on
20 the Ayes and the Nays. In other words, you can record a num-
21 ber; that's one of the problems that we're trying to cover
22 here. Now, does everyone understand that lines fourteen
23 through sixteen, on final passage, etc., are part of subsection
24 two? Does anyone have any objection to that since we ap-
25 proved it? All right. That will be considered as part of

1 subsection two. Now, we're on subsection three and the issue
2 arises on the last sentence, is that it? All right. Now,
3 the Chair understands the problem. Does anybody want to do
4 anything about it? Mr. McNeil, you made a motion and I didn't
5 get it down. What's your motion?

6 DELEGATE McNEIL: Mr. Chairman. My motion is to
7 reinstate that last sentence that was stricken by Style and
8 Drafting -- reinstate it, changing the word, section, to sub-
9 section.

10 CHAIRMAN GRAYBILL: All right. Mr. McNeil makes
11 a motion --

12 DELEGATE McNEIL: And, Mr. Chairman, strike sub-
13 section six. The two should go hand in hand.

14 CHAIRMAN GRAYBILL: Mr. McNeil makes a motion to
15 add lines twenty-four to twenty-six back into subsection three,
16 adding the word, sub, before section and then on the next page,
17 page fourteen, striking section six where it was set up separ-
18 ately. Your purpose, I think, is that you felt that applied
19 to the material in subsection three, is that it?

20 DELEGATE McNEIL: Yes, Mr. Chairman. I'm sure that
21 when this sentence was discussed in the Committee of the Whole,
22 it was intended and, in fact, did apply just to subsection
23 three and not to the entire section. It may be a good idea to
24 have it apply to the whole section, but I believe that is a
25 substantive change and was not discussed by this body.

1 CHAIRMAN GRAYBILL: Very well. Is there discussion
2 of Mr. McNeil's amendment?

3 Mr. Cate.

4 DELEGATE CATE: That was the intent of our committee,
5 at least, that it only apply to subsection three.

6 CHAIRMAN GRAYBILL: Mr. Loendorf.

7 DELEGATE LOENDORF: Mr. Chairman. I would oppose
8 the substitute motion of Mr. McNeil. Our committee did meet
9 and approved the Style and Drafting proposal here. I believe
10 Mr. Cate missed that meeting. It was our intent, and we felt
11 that what we really intended by this line, as now proposed in
12 subsection six, to prevent laws from being declared unconstitu-
13 tional many years later on technical grounds. Most of the
14 subsections here in section eleven deal with procedures as to
15 how a bill is passed, except subsection five. We felt that
16 the provision adequately applied here, since appropriations
17 would now be on an annual basis, and two years would be plenty
18 of time to challenge a law there because a law really is only
19 in effect for one year. The money will be spent after that.

20 CHAIRMAN GRAYBILL: Is there further discussion?
21 Very well. The issue arises on Mr. McNeil's motion to add
22 lines twenty-four, twenty-five and twenty-six back into sub
23 three, and strike section six. So many as shall be in favor
24 of that motion, say Aye.

25 DELEGATES: Aye.

1 CHAIRMAN GRAYBILL: Opposed, No.

2 DELEGATES: No.

3 CHAIRMAN GRAYBILL: The Noes have it and it's
4 defeated. Are there other matters on subsection three?

5 Mr. Aasheim.

6 DELEGATE AASHEIM: I think Mr. McNeil is right. We
7 have made a substantive change. If we're going to adopt the
8 wording of the Style and Drafting presentation, we better move
9 to suspend the rules and make that change. I have no objection
10 to the change. I think it might be all right to have it in
11 there. So, Mr. President, I move to suspend the rules for
12 the purpose of adopting --

13 CHAIRMAN GRAYBILL: Mr. Aasheim, can you do that
14 when we get to six, first of all? We're not there yet.

15 DELEGATE AASHEIM: We could. That would be fine.

16 CHAIRMAN GRAYBILL: At the moment, I'm trying to
17 get rid of just subsection three. Mr. Romney, the record may
18 show that you're present.

19 Mr. Schiltz.

20 DELEGATE SCHILTZ: In anticipation of Mr. Aasheim
21 making that motion, I don't think we made a substantive change
22 because the language that we had said, this section, which
23 pertains to the entire section eleven and not just subsection
24 four as it was drafted. So, it pertaining to the entire section,
25 we could make a subsection of it without any substantive change

1 and that's what we did.

2 CHAIRMAN GRAYBILL: Are there other amendments or
3 suggestions or debate about subsection three of section eleven?

4 Mrs. Bates.

5 DELEGATE BATES: Mr. Chairman. I, too, feel that
6 this is a substantive change because our original intent was
7 on the title section only.

8 CHAIRMAN GRAYBILL: Is there other discussion?
9 Very well. All in favor of adopting section eleven, subsection
10 three, say Aye.

11 DELEGATES: Aye.

12 CHAIRMAN GRAYBILL: Opposed, No.

13 DELEGATES: No.

14 CHAIRMAN GRAYBILL: The Ayes have it and it's
15 adopted. All right, subsection four.

16 DELEGATE SCHILTZ: I move that when this committee
17 does arise and report after having had under consideration
18 section eleven, subsection four of the Style and Drafting
19 Report Number Three, it recommend the same be adopted. Mr.
20 Chairman.

21 CHAIRMAN GRAYBILL: Mr. Schiltz.

22 DELEGATE SCHILTZ: There are nothing but very minor
23 style changes in subsection four.

24 CHAIRMAN GRAYBILL: Is there any discussion on sub-
25 section four? All in favor of subsection four, say Aye.

1 DELEGATES: Aye.

2 CHAIRMAN GRAYBILL: Opposed, No.

3 (No response)

4 CHAIRMAN GRAYBILL: It's adopted. Subsection five
5 on page fourteen.

6 Mr. Schiltz.

7 DELEGATE SCHILTZ: Mr. Chairman. I move that when
8 this committee does arise and report after having had under
9 consideration subsection five of section eleven of the Style
10 and Drafting Report Number Three, it recommend the same be
11 adopted. Mr. Chairman.

12 CHAIRMAN GRAYBILL: Mr. Schiltz.

13 DELEGATE SCHILTZ: I guess there are no changes
14 here -- a comma, maybe, and the renumbering.

15 CHAIRMAN GRAYBILL: All in favor of subsection
16 five, say Aye.

17 DELEGATES: Aye.

18 CHAIRMAN GRAYBILL: It's adopted. Now, subsection
19 six.

20 DELEGATE SCHILTZ: Mr. Chairman. I move that when
21 this committee does arise and report after having had under
22 consideration subsection six of section eleven of the Style
23 and Drafting Report Number Three, it recommend that the same
24 be adopted. Mr. Chairman.

25 CHAIRMAN GRAYBILL: Mr. Schiltz.

1 DELEGATE SCHILTZ: I think that has been adequately
2 discussed and voted upon.

3 CHAIRMAN GRAYBILL: Mr. Aasheim.

4 DELEGATE AASHEIM: It's immaterial to me if you
5 feel it's all right to leave it this way without suspending
6 the rules. I'm just kind of wondering about our comments.
7 Right now I don't have them available. But, if the comments
8 show this applies to our subsection four, this might be
9 questioned. So, just as a matter of procedure, I'm going to
10 move to suspend the rules for the purpose of adopting sub-
11 section six in section eleven.

12 CHAIRMAN GRAYBILL: I've got to have that in writing,
13 Mr. Aasheim. Very well. Mr. Aasheim has moved, concerning
14 section eleven, subsection six of the Style and Drafting
15 report on the legislative proposal, to suspend the rules for
16 the purpose of adopting subsection six of section eleven of
17 the unicameral article. A motion to suspend the rules takes
18 an absolute majority or two-thirds, whichever is less. Is
19 there any discussion?

20 Mr. Harper.

21 DELEGATE HARPER: Mr. Chairman. I think that the
22 sense of the group has already been obtained. I don't know
23 that we need to follow through on this particular motion. The
24 word, section, is used as Mr. Schiltz pointed out, in number
25 six and that was not changed in what is now the new number six.

1 Our Legislative Committee went over this in detail and raised
2 this same question. We finally decided that, as Mr. Loendorf
3 said, the real sense and intent of our whole section eleven
4 had not been changed by it, and so we decided to go along with
5 the Drafting Committee. I don't think the reconsideration is
6 necessary at this time. We've already accomplished it.

7 CHAIRMAN GRAYBILL: Is there further discussion?
8 All in favor of Mr. Aasheim's motion to suspend the rules, in-
9 dicate so by voting Aye on the voting machines and opposed, No.
10 Have all the delegates voted? Does any delegate wish to change
11 his vote? Close the vote. Thirty-eight having voted Aye
12 and thirty-one having voted No, the motion fails because less
13 than fifty percent or less than two-thirds has voted for it.
14 Very well. What's your pleasure on section six? Is there
15 any more discussion of subsection six? All in favor of sub-
16 section six, say Aye.

17 DELEGATES: Aye.

18 CHAIRMAN GRAYBILL: Opposed, No.

19 DELEGATES: No.

20 CHAIRMAN GRAYBILL: The Ayes have it and it's
21 adopted. Section twelve.

22 DELEGATE SCHILTZ: Mr. Chairman. I move that when
23 this committee does arise and report after having had under
24 consideration section twelve of Report Number Three of the
25 Style and Drafting Committee, it recommend the same be adopted.

1 Mr. Chairman.

2 CHAIRMAN GRAYBILL: Mr. Schiltz.

3 DELEGATE SCHILTZ: We made no significant changes
4 except we changed may to shall on line eleven. In other words,
5 we considered that shall was intended there and I feel sure
6 that it was.

7 CHAIRMAN GRAYBILL: Any discussion? All in favor
8 of section twelve, say Aye.

9 DELEGATES: Aye.

10 CHAIRMAN GRAYBILL: Opposed.

11 (No response)

12 CHAIRMAN GRAYBILL: It's adopted. Section thirteen,
13 sub one.

14 DELEGATE SCHILTZ: Mr. Chairman. I move that when
15 this committee does arise and report after having had under
16 consideration section thirteen, sub one, of the Style and
17 Drafting Report Number Three, it recommend the same be adopted.
18 Mr. Chairman.

19 CHAIRMAN GRAYBILL: Mr. Schiltz.

20 DELEGATE SCHILTZ: Once again, we substituted the
21 shall for may on line sixteen. In other words, it will read:
22 The governor, executive officers, heads of state departments,
23 judicial officers, and such other officers as may be subject
24 to impeachment by law shall be removed from office upon con-
25 viction of impeachment. Otherwise, there are no changes.

1 CHAIRMAN GRAYBILL: The Chair would like to consider
2 sections two and three at the same time since there's a motion
3 here on that. Do you have any comments on subsections two or
4 three, Mr. Schiltz?

5 DELEGATE SCHILTZ: Well, we changed it to legis-
6 lature there instead of senate. We attempted to interpret what
7 was intended there. If there's any problem with it, we'd be
8 glad to hear it. I think there is a motion to amend, isn't
9 there?

10 CHAIRMAN GRAYBILL: Yes. Mr. Harlow, do you want
11 the Chair to read your motion?

12 DELEGATE HARLOW: Mr. Chairman. Just a few comments
13 before I make the motion to amend this. I was disturbed when
14 this came in from the Legislative Committee about the words,
15 conviction of impeachment, and various uses of the word, im-
16 peachment. I didn't say anything at that particular time
17 because I thought the Style and Drafting would catch the error.
18 After it came back from Style and Drafting, I was kind of like
19 Miles Standish. I figured if I was going to do anything, I'd
20 have to do it myself. So, I made up these amendments and I
21 so move now to amend section thirteen, subsections one, two
22 and three, page four, being lines ten through twenty-two to
23 read as follows. It's on this sheet of paper that has been
24 given to all of you. The top part -- I amended sections one,
25 two and three merely for expediency. It deals with the same

1 thing all the way along. You can see there what I took out.
2 I put in one or two other small words. The bottom of the page
3 is the way the thing will read without the amendment. On
4 the back of the page are the various comments that I made.

5 CHAIRMAN GRAYBILL: All right. Now, Mr. Harlow,
6 before we get too far along, we'd better have something read
7 here so that we know the differences. Would you like the
8 clerk to read the amended section thirteen, or read the amend-
9 ments?

10 DELEGATE HARLOW: Okay, you may go ahead.

11 CHAIRMAN GRAYBILL: Mr. Clerk, why don't you read
12 the amended section thirteen? It's the second paragraph --
13 slowly.

14 CLERK SMITH: (Reading) Sub one: The governor,
15 executive officers, heads of state departments, judicial
16 officers and such other officers as may be provided by law,
17 are subject to impeachment and upon conviction shall be re-
18 moved from office. Other proceedings for removal from public
19 office may be provided by law. Subsection two: The legis-
20 lature shall provide for the manner and procedure and causes
21 for impeachment and shall provide for a tribunal. Subsection
22 three: Impeachment can be brought only by a two-thirds vote
23 of the legislature. The tribunal hearing the charges shall
24 convict only by a vote of two-thirds or more of its members.
25 Subsection three of section twelve, Mr. Chairman.

1 CHAIRMAN GRAYBILL: Mr. Harlow, do you want to
2 explain the changes you're proposing here?

3 DELEGATE HARLOW: They're on the comments on the
4 second -- on the back of this page. The purpose of this amend-
5 ment is to eliminate the semantically impossible phrases con-
6 viction of impeachment in subsection one and conviction for
7 impeachment in subsection three, and the reference to re-
8 moval by impeachment in subsection two. Impeachment, of
9 course, is the act of the legislature in bringing charges
10 against a public official. The dictionary definition is: the
11 act of charging a public official before a competent tribunal
12 with misconduct in office. You do not convict a man of having
13 charges brought against him or for having charges brought
14 against him. At the trial resulting from impeachment, he
15 might be convicted, but it would be for a wrongdoing and not
16 for impeachment. An official impeachment by the legislature
17 cannot -- An official impeached by the legislature cannot
18 be convicted of impeachment anymore than a person indicted by
19 a grand jury can be convicted of indictment. In this amend-
20 ment, the first sentence of section one is rearranged to
21 make the meaning clear without the use of the phrase, convict-
22 ed of impeachment. In subsection three, the meaning is
23 clear when the words, for impeachment, are deleted. No
24 other changes. Under similar reasoning, the words removal
25 by, are deleted in subsection two. You do not remove anyone

1 from office by bringing charges against him. He is only re-
2 moved upon conviction. The meaning of the subsection is not
3 changed. The intent of these subsections is clear and the
4 proposed changes merely take out the incorrect use of the
5 technical term, impeachment, in the three phases mentioned.
6 A little note that this same problem will be in the bicameral
7 section in section thirteen, page four. I move the adoption
8 of the amendment, Mr. Chairman.

9 CHAIRMAN GRAYBILL: Mr. Harlow. All right, Mr.
10 Aasheim.

11 DELEGATE AASHEIM: I think Mr. Harlow has, in his
12 amendment, the very thing we do have. We say, in lines
13 fifteen and sixteen, such officers as may be made subject to
14 impeachment by law shall be removed from office upon con-
15 viction. We don't say they will be removed by impeachment.
16 We say the conviction comes after the charges. So, I think
17 the terminology here is adequate. I think it ought to cover
18 what you want.

19 CHAIRMAN GRAYBILL: Mr. Harlow.

20 DELEGATE HARLOW: Mr. Chairman. It says -- you
21 didn't read all of the words. It says, conviction of im-
22 peachment. That's the words that I'm objecting to, conviction
23 of impeachment. I merely took out the term, of impeachment.
24 I did not change the intent any.

25 CHAIRMAN GRAYBILL: Mr. Aasheim, the point is that,

1 legally, impeachment is like indictment. You say the word
2 conviction of impeachment to Mr. Harlow, is like saying con-
3 viction of indictment. Merely indicting is not conviction,
4 so he has, to my way of thinking, a legally tenable position
5 here. It's because you add the words, conviction of impeach-
6 ment. You don't convict them of impeachment. You impeach
7 them and then you convict them. That's separate. I think
8 some of the lawyers might comment if they like, but it does
9 seem to me that he has a --

10 DELEGATE AASHEIM: On line sixteen, let's put a
11 period after conviction and strike of impeachment.

12 CHAIRMAN GRAYBILL: That's essentially what he has
13 done. He has made some other minor changes. If you want to
14 amend his amendment, that's fine, but he has done that. Is
15 there other discussion of it?

16 Mr. Schiltz.

17 DELEGATE SCHILTZ: Mr. Chairman. We considered
18 this matter in Style and Drafting but we were reluctant to
19 make any changes thinking that we might be fooling with sub-
20 stance. We ran into the additional problem of having to
21 specify a tribunal which, if it were unicameral, there won't
22 be because, customarily, a bill of impeachment is brought in
23 the house and tried in the senate. I have no problem. I
24 think Mr. Harlow is right.

25 CHAIRMAN GRAYBILL: It's the opinion of the Chair

1 that when we adopted this originally, we did mix up the concept
2 of impeachment and conviction. For the members here who are
3 not lawyers, impeachment is merely a term that implies you're
4 going to be tried. It's like indictment and it does not
5 imply that you're guilty. Therefore, as in subsection two
6 where it says causes for removal by impeachment, you really
7 aren't removed by being impeached anymore than you're removed
8 from office by being indicted in a criminal sense. I think
9 Mr. Harlow has correctly cleared up the legal language. Does
10 anybody have any other discussion on the matter? Very well.
11 The issue is on Mr. Harlow's proposed amendment to subsections
12 one, two and three of section thirteen. You have it before
13 you there on the desks and it reads, as he has cleaned it up
14 there in the bottom half, the substance of which is to take
15 out the idea that impeachment in any way involves conviction.
16 So many as shall be in favor of Mr. Harlow's motion, say Aye.

17 DELEGATES: Aye.

18 CHAIRMAN GRAYBILL: Opposed, No.

19 (No response)

20 CHAIRMAN GRAYBILL: It's adopted. Now, Mr. Schiltz,
21 do you want to move sections one, two and three as amended?

22 DELEGATE SCHILTZ: Yes. I move that when this
23 committee does arise and report after having had under con-
24 sideration section thirteen, subsections one, two and three,
25 as amended, of Style and Drafting Report Number Three, it

1 recommend the same be adopted.

2 CHAIRMAN GRAYBILL: So many as are in favor of
3 adopting subsections one, two and three of section thirteen,
4 as amended, say Aye.

5 DELEGATES: Aye.

6 CHAIRMAN GRAYBILL: Opposed, No.

7 (No response)

8 CHAIRMAN GRAYBILL: So ordered. Subsection four
9 of section thirteen.

10 DELEGATE SCHILTZ: Mr. Chairman. I move that when
11 this committee does arise and report after having had under
12 consideration subsection four of section thirteen, of the
13 Style and Drafting Report Number Three, it recommend the
14 same be adopted. Mr. Chairman.

15 CHAIRMAN GRAYBILL: Mr. Schiltz.

16 DELEGATE SCHILTZ: No significant changes there.
17 We transposed, only, from one place to another. That's about
18 all.

19 CHAIRMAN GRAYBILL: Is there any discussion of
20 subsection four of section thirteen? All in favor, say Aye.

21 DELEGATES: Aye.

22 CHAIRMAN GRAYBILL: Opposed, No.

23 (No response)

24 CHAIRMAN GRAYBILL: It's adopted. Section fourteen,
25 Mr. Schiltz.

1 DELEGATE SCHILTZ: Mr. Chairman. I move that when
2 this committee does arise and report after having had under
3 consideration section fourteen, subsection one, of the Style
4 and Drafting Report Number Three, it recommend the same be
5 adopted. Mr. Chairman.

6 CHAIRMAN GRAYBILL: Mr. Schiltz.

7 DELEGATE SCHILTZ: There are no significant changes
8 here.

9 CHAIRMAN GRAYBILL: Any discussion? All in favor
10 of adopting section fourteen, say Aye.

11 DELEGATES: Aye.

12 CHAIRMAN GRAYBILL: Opposed, No.

13 (No response)

14 CHAIRMAN GRAYBILL: It's adopted. Section fourteen,
15 sub two.

16 Mr. Schiltz.

17 DELEGATE SCHILTZ: Mr. Chairman. I move that when
18 this committee does arise and report after having had under
19 consideration section fourteen, sub two, of the Style and
20 Drafting Report Number Three, it recommend the same be adopted.
21 Mr. Chairman.

22 CHAIRMAN GRAYBILL: Mr. Schiltz.

23 DELEGATE SCHILTZ: One note you might want to make
24 and correct -- Our comment on page twenty-two refers to line
25 three here when it should be line eleven, just to keep your

1 books in order. Then, on line ten, as reported out of the
2 Committee of the Whole, it said, preceding each census, and
3 we inserted the words, federal population census, and gleamed
4 that from the debate on the floor. The rest is all style.

5 CHAIRMAN GRAYBILL: Any discussion of fourteen,
6 sub two? All in favor of adopting it, say Aye.

7 DELEGATES: Aye.

8 CHAIRMAN GRAYBILL: Opposed.

9 (No response)

10 CHAIRMAN GRAYBILL: It's adopted. Fourteen, sub
11 three.

12 DELEGATE SCHILTZ: Mr. Chairman. I move that when
13 this committee does arise and report after having had under
14 consideration section fourteen, sub three, of the Style and
15 Drafting Report Number Three, it recommend the same be adopted.
16 Mr. Chairman.

17 CHAIRMAN GRAYBILL: Mr. Schiltz.

18 DELEGATE SCHILTZ: There is a possible substantive
19 question here. There was a question in our minds as the
20 subsection was written, that the first commission should re-
21 port to the session of the legislature which appointed it.
22 It seemed obvious to the committee that this was not the in-
23 tent. For example, if we had a 1979 session and it appointed
24 a commission, and we had a 1980 census which would then
25 report -- why, it wouldn't make sense, so we restructured sub

1 three to conform with that thought.

2 CHAIRMAN GRAYBILL: Is there any discussion of sub
3 three? If not, all in favor of adopting fourteen, sub three,
4 -- excuse me, Mr. Harper.

5 DELEGATE HARPER: I wondered if Mr. Schiltz, when
6 talking about a possible substantive change, might have men-
7 tioned their addition of the word regular session, whereas
8 the adopted section did not say regular session, possibly
9 allowing for a called session. Now, that may not arise, but
10 it might be a technical thing whereas just a brief called
11 session might deal with this idea, when a regular session
12 might be a year off.

13 CHAIRMAN GRAYBILL: Mr. Schiltz.

14 DELEGATE SCHILTZ: Mr. Chairman. I apologize for
15 not noting that. Of course, it is underlined, but I got so
16 carried away with what we had done otherwise that I didn't
17 note that change. You're right, Mr. Harper. That might be
18 a change. I don't recall exactly what the sense of the debate
19 was on that subject, but we did put it in, and we did talk
20 about it and we decided it should be in there.

21 DELEGATE HARPER: Mr. Chairman. I move to amend
22 subsection three of section fourteen of the committee report,
23 by deleting the word, regular, on line twenty-six so that the
24 sentence reads, the first session.

25 CHAIRMAN GRAYBILL: Very well. Mr. Harper has

1 proposed an amendment to line twenty-six of section fourteen,
2 sub three striking out the word, regular.

3 DELEGATE HARPER: The reason being simply that the
4 deletion of that word does not really keep regular sessions
5 from handling it, but frees the possibility of a special
6 session to handle it.

7 CHAIRMAN GRAYBILL: Is there discussion?
8 Mr. Loendorf.

9 DELEGATE LOENDORF: Mr. Chairman. I'd just like
10 to comment on why the committee on Style made that change.
11 The reason we put in first regular session is, supposing a
12 regular session of the legislature appointing the commission
13 appointed them and then went immediately into special ses-
14 sion. The sentence, as it reads, would then require that
15 the commission appointed submit its plan to the special ses-
16 sion, and it may give them a very short time in which to
17 prepare the plan.

18 CHAIRMAN GRAYBILL: Mrs. Bowman. Is there further
19 discussion? All in favor of Mr. Harper's motion to strike
20 the word regular on line twenty-six of sub three, say Aye.

21 DELEGATES: Aye.

22 CHAIRMAN GRAYBILL: Opposed, No.

23 DELEGATES: No.

24 CHAIRMAN GRAYBILL: All in favor of it, vote Aye
25 on the voting machines and all against it, vote No on the

1 voting machines. Vote Aye if you want to strike the word
2 regular and No if you don't. Have all the delegates voted?
3 Any delegate want to change his vote? Thirty-eight delegates
4 having voted No and twenty-eight having voted Aye, the motion
5 fails. Is there other discussion of subsection three of
6 section fourteen?

7 Mrs. Eck.

8 DELEGATE ECK: It would be appropriate to move for
9 reconsideration of this because I think the delegates don't
10 really understand the implication on the first apportionment.
11 It might put it off so we didn't have single member districts
12 until 1976 or 1978.

13 CHAIRMAN GRAYBILL: Say a little more, Mrs. Eck.

14 DELEGATE ECK: Okay. In our discussion of this,
15 we could see the possibility that the 1973 session appoints
16 a commission to reapportion for single member districts. If
17 this first legislature, and we don't know if these are still
18 going to be biannual sessions. It is assumed that they
19 could be. They might not come back and have reported to them
20 the report until 1975, unless they get into a special session
21 in 1974. If it didn't get reported until 1975, this means
22 that if there were delays, it could be that it wouldn't even
23 get settled by the 1975 filing date and that it wouldn't be --
24 for another couple of years, it might be 1978 before we got
25 single member districts.

1 CHAIRMAN GRAYBILL: Mrs. Eck, is it possible that
2 the transition section could suggest to the legislature earl-
3 ier times, or is that impossible?

4 DELEGATE ECK: I think that the transition -- I
5 think it could be settled in transition if the annual sessions
6 went into effect immediately, so that there would be a 1974
7 session. There has been some question about this since the
8 people elected this fall, presumably, are expecting to be
9 elected for a biennial session. You know, I have no idea
10 what is going to come out in transition, but I think this is
11 where the problem is. I don't think there would be a real
12 problem if we were assured that there would be another session
13 in 1974 -- regular session.

14 CHAIRMAN GRAYBILL: May I ask another question?
15 If we had stricken the word regular, would you feel that
16 would have solved the problem?

17 DELEGATE ECK: I think so, because I think that in
18 1974 with all the work that there is to do, that if a biennial
19 session does not -- I think that they will at least have a
20 special session sometime after their 1973 session. We're
21 loading up a whale of a lot of work for them to do. I think
22 there would be time for them to come back with a special
23 session, maybe even before January of 1974. Even getting it
24 done in January of 1974 -- well, no, if they got it done in
25 '74, it would be in plenty of time for the '75 ballot. But,

1 there are problems and then you have the fact that -- Of
2 course, single member districts doesn't have to be tied in
3 with unicameralism, but there is the fact that we do have
4 that 1980 referendum coming up, and we might just be barely
5 launched into a single member unicameral system when that
6 referendum comes up.

7 CHAIRMAN GRAYBILL: The chair would like to suggest
8 to the body that we have not left subsection three of section
9 fourteen. It hasn't been adopted yet. If anyone is seriously
10 worried about this, you might again try to strike the word
11 regular and if we vote it differently, that might solve the
12 problem without reopening the whole substantive issue of
13 subsection three. If you don't want to try that, why, go
14 ahead.

15 Mr. Burkhardt.

16 DELEGATE BURKHARDT: Would Mr. Loendorf yield to a
17 question?

18 CHAIRMAN GRAYBILL: Mr. Loendorf.

19 DELEGATE LOENDORF: I'll try.

20 DELEGATE BURKHARDT: Jerry, I pushed the red button
21 because you did. Usually, I do my own thinking but your
22 statement sort of colored what I was thinking about. I won-
23 der in light of this further conversation, if you would say
24 a little bit more.

25 DELEGATE BURKHARDT: Could you give me a specific

1 question?

2 DELEGATE LOENDORF: Are we put off until 1978 before
3 this thing can be done with single member districts or are
4 we not?

5 DELEGATE BURKHARDT: I don't think so.

6 DELEGATE LOENDORF: When can it happen?

7 DELEGATE BURKHARDT: Of course, that depends on
8 when the new constitution goes into effect. As soon as it
9 goes into effect, then the first session thereafter, whether
10 it be a regular or a special session, it seems to me that
11 the legislature is required to appoint this commission,
12 which has to report back at the first regular session after
13 its appointment.

14 DELEGATE LOENDORF: Mr. Chairman. Is it all right
15 to talk like this? I should be asking permission.

16 CHAIRMAN GRAYBILL: You may ask another question
17 of Mr. Burkhardt.

18 DELEGATE LOENDORF: Are you saying that the com-
19 mission would be able to go ahead with its plan without
20 waiting two years for another session? Is that what you're
21 saying?

22 DELEGATE BURKHARDT: If the constitution is
23 adopted, there will be annual sessions.

24 DELEGATE LOENDORF: So the regular session would
25 be coming up immediately?

1 DELEGATE BURKHARDT: Right.

2 DELEGATE LOENDORF: I wonder if Mrs. Eck would yield
3 to a question, Mr. Chairman.

4 CHAIRMAN GRAYBILL: Mrs. Eck.

5 DELEGATE ECK: I yield.

6 DELEGATE LOENDORF: Does this satisfy your question,
7 as Jerry has now discussed it, or is it still a problem?

8 DELEGATE ECK: I think it would satisfy it. It
9 will mean that we will have to be very sure that annual ses-
10 sions will go immediately into effect when we get it through
11 the transition phase. I imagine that we'll have a chance
12 to debate and approve that. I think that once we get launched,
13 there's no problem with the regular there.

14 DELEGATE LOENDORF: So, you would be willing to
15 leave the regular in as of now?

16 DELEGATE ECK: I would really like to leave the
17 regular in and make sure that we launch the annual sessions
18 immediately.

19 DELEGATE LOENDORF: No further questions, Your
20 Honor.

21 CHAIRMAN GRAYBILL: Mr. Skari.

22 DELEGATE SKARI: Mr. President. I drew up a little
23 timetable. We discussed this in the committee. The ratifi-
24 cation date would be, of course, in June 1972 and then the
25 next election would be in November 1972. That means that in

1 January 1973 when the legislature convened, they could appoint
2 this commission. Now, I suppose this somewhat hinges on when
3 this constitution takes effect. If this constitution does
4 not take effect until July 1st of 1973, we might have a
5 problem there with these majority-minority leaders being able
6 to appoint people. If they could do this in '73 during this
7 session, then I don't think there would be any problem. I
8 would assume that we would have annual sessions starting in
9 January of 1974 and the commission could submit a plan then.
10 They could submit this plan and have it ready for the opening
11 of that session. The legislature would have thirty days.
12 The secretary of state's office tells me that they have to
13 have a plan, preferably ninety days before the primary elect-
14 ion which is the first Tuesday in June. They could do it
15 with as little as forty-five days, but that really cramps
16 them. They prefer about ninety. So, if this was ready by
17 March 1st or April 1st, I think it would be all right. Thank
18 you, Mr. President.

19 CHAIRMAN GRAYBILL: Very well. With that discussion
20 in mind, Style and Drafting might think about it in transition
21 unless someone has an amendment or motion to make now. Very
22 well. All those in favor of adopting subsection three, say
23 Aye.

24 DELEGATES: Aye.

25 CHAIRMAN GRAYBILL: Opposed, No.

1 (No response)

2 CHAIRMAN GRAYBILL: It's adopted. Section fifteen.

3 DELEGATE SCHILTZ: Mr. Chairman. I move that when
4 this committee does arise and report after having had under
5 consideration section fifteen, sub one of the Style and Draft-
6 ing Report Number Three, it recommend the same be adopted.
7 Mr. Chairman.

8 CHAIRMAN GRAYBILL: Mr. Schiltz.

9 DELEGATE SCHILTZ: Minor change in style. No
10 possible change in anything else.

11 CHAIRMAN GRAYBILL: Any discussion? All in favor
12 of section fifteen, sub one, say Aye.

13 DELEGATES: Aye.

14 CHAIRMAN GRAYBILL: Opposed, No.

15 (No response)

16 CHAIRMAN GRAYBILL: It's adopted. Sub two.

17 DELEGATE SCHILTZ: Mr. Chairman. I move that when
18 this committee does arise and report after having had under
19 consideration section fifteen, sub two, of the Style and
20 Drafting Report Number Three, it recommend the same be
21 adopted. Mr. Chairman.

22 CHAIRMAN GRAYBILL: Mr. Schiltz.

23 DELEGATE SCHILTZ: There are no changes here at all.

24 CHAIRMAN GRAYBILL: All in favor of sub two, say
25 Aye.

1 DELEGATES: Aye.

2 CHAIRMAN GRAYBILL: Opposed.

3 (No response)

4 CHAIRMAN GRAYBILL: It's adopted. Sub three.

5 DELEGATE SCHILTZ: Mr. Chairman. I move that when
6 this committee does arise and report after having had under
7 consideration section fifteen, sub three, that it recommend
8 the same be adopted. Mr. Chairman.

9 CHAIRMAN GRAYBILL: Mr. Schiltz.

10 DELEGATE SCHILTZ: Now, involved in adopting this,
11 you'll see that there is only sub three here with sub A's
12 and sub B's, etc., but each of those incorporates some lang-
13 uage from the bicameral because this is the section that ob-
14 tains when and if we have had a unicameral up until 1980,
15 and then the voters choose to go back to the bicameral, and
16 the committee felt it would be necessary to have all this
17 language in there for use by the people to know what was in
18 the entire article.

19 CHAIRMAN GRAYBILL: Mr. Schiltz, would it be better
20 to skip to bicameral?

21 DELEGATE SCHILTZ: That's what I was just going to
22 suggest except let's take sections sixteen and seventeen and
23 then go to the bicameral for section fifteen.

24 CHAIRMAN GRAYBILL: Unless the Chair hears objection,
25 we will skip section fifteen, sub three, and move over to

1 page nineteen, section sixteen on line twenty-one. Is there
2 objection to that? Hearing none, section sixteen on page
3 nineteen, line twenty-one. Mr. Schiltz.

4 DELEGATE SCHILTZ: Mr. Chairman. I move that when
5 this committee does arise and report after having under con-
6 sideration section sixteen of the Style and Drafting Report
7 Number Three, it recommend the same be adopted. Mr. Chairman.

8 CHAIRMAN GRAYBILL: Mr. Schiltz.

9 DELEGATE SCHILTZ: Only style. We'll probably put
10 this section somewhere else in the final draft because we
11 don't think it's germane to the legislative subject. That
12 comes up another day.

13 CHAIRMAN GRAYBILL: Discussion? All in favor of
14 section sixteen, say Aye.

15 DELEGATES: Aye.

16 CHAIRMAN GRAYBILL: Opposed.

17 (No response)

18 CHAIRMAN GRAYBILL: It's adopted. Section seven-
19 teen.

20 DELEGATE SCHILTZ: I move to amend section seventeen
21 on line one, page twenty, by striking senators and inserting
22 in lieu thereof members.

23 CHAIRMAN GRAYBILL: All in favor of striking sen-
24 ators and inserting in lieu thereof members, say Aye.

25 DELEGATES: Aye.

1 CHAIRMAN GRAYBILL: Opposed.

2 (No response)

3 CHAIRMAN GRAYBILL: So ordered.

4 DELEGATE SCHILTZ: Mr. Chairman. I move that when
5 this committee does arise and report after having had under
6 consideration section seventeen of the Style and Drafting
7 Report Number Three, as amended, it recommend the same be
8 adopted. Mr. Chairman.

9 CHAIRMAN GRAYBILL: Mr. Schiltz.

10 DELEGATE SCHILTZ: You will note that this is a
11 complete rewrite, but for style only. This might be relocated
12 too. No, this one won't be relocated. This is all right
13 here. No, it will be relocated because it covers all state
14 and local officers and employees.

15 CHAIRMAN GRAYBILL: Is there any discussion of
16 section seventeen? All in favor of section seventeen, say
17 Aye.

18 DELEGATES: Aye.

19 CHAIRMAN GRAYBILL: Opposed.

20 (No response)

21 CHAIRMAN GRAYBILL: It's adopted. Now, we skip to
22 page one. It's an unmarked page after the brown sheet in
23 your book.

24 DELEGATE SCHILTZ: It has a number seven after that,
25 Mr. Chairman. Page seven, after the yellow divider.

1 CHAIRMAN GRAYBILL: Go to page seven after the yel-
2 low divider. Page seven after the yellow divider, about six
3 pages in from the back. Very well. We're now considering
4 the bicameral Style and Drafting Report.

5 Mr. Schiltz, section one.

6 DELEGATE SCHILTZ: Mr. Chairman. I move that when
7 this committee does arise and report after having had under
8 consideration section one of the bicameral section of the
9 Style and Drafting Report Number Three, it recommend the
10 same be adopted. Mr. Chairman.

11 DELEGATE SCHILTZ: Only style changes in section
12 one.

13 CHAIRMAN GRAYBILL: Any discussion of section one?
14 All in favor of section one, say Aye.

15 DELEGATES: Aye.

16 CHAIRMAN GRAYBILL: All opposed.

17 (No response)

18 CHAIRMAN GRAYBILL: It's adopted. Section two.

19 DELEGATE SCHILTZ: Mr. Chairman. I move that when
20 this committee does arise and report after having had under
21 consideration section two of the bicameral section of the
22 Style and Drafting Report Number Three, it recommend the
23 same be adopted. Mr. Chairman.

24 CHAIRMAN GRAYBILL: Mr. Schiltz.

25 DELEGATE SCHILTZ: Once again, only style changes.

1 CHAIRMAN GRAYBILL: Have you any discussion, Mr.
2 Schiltz?

3 DELEGATE SCHILTZ: No discussion.

4 CHAIRMAN GRAYBILL: Very well.

5 Mr. Aasheim.

6 DELEGATE AASHEIM: Mr. President. I'm going to
7 move to suspend the rules on section two. We have had con-
8 siderable dissatisfaction voiced in regards to size of our
9 bicameral legislature and if this adjustment is made in the
10 bicameral, we'll have to reconsider our action on the uni-
11 cameral, I suppose. We are tied in here pretty close on
12 this number of the members -- one hundred to one hundred six.
13 Remember this, the legislature shall designate the number
14 of members. This is not the job of the reapportionment com-
15 mission. The legislature must say how many members there
16 are to be and the commission will then work from that number.
17 It may be that we have here tied ourselves in too closely
18 and, for that purpose, I would like to reconsider our action.
19 I know it's going to open up a can of worms, but I think it's
20 quite important that we do adjust this because there has been
21 so much dissatisfaction. I don't have any answer as to the
22 size.

23 CHAIRMAN GRAYBILL: Mr. Aasheim, let's move to
24 suspend first. I think they've seen your purpose.

25 DELEGATE AASHEIM: As long as they understand, and

1 as long as it's confined to section two, I shall so move then
2 to suspend the rules for the purpose of reconsidering section
3 two on page seven of the legislative article.

4 CHAIRMAN GRAYBILL: And for the purposes of adjust-
5 ing the size of the membership of the legislative body therein
6 contained.

7 DELEGATE AASHEIM: Yes.

8 CHAIRMAN GRAYBILL: All right. Mr. Aasheim has
9 moved to suspend the rules so that we can reconsider the sub-
10 stance of section two of the legislative bicameral article
11 on page seven, specifically concerning the number or the
12 size of the membership of the bicameral legislature. This
13 motion takes two-thirds or fifty-one votes. Is there dis-
14 cussion?

15 Mr. McNeil.

16 DELEGATE MCNEIL: Mr. Chairman. I'd like to ask
17 Delegate Aasheim just one question. What size would he pro-
18 pose if the rules are suspended and this is opened up?

19 CHAIRMAN GRAYBILL: Just a minute, Mr. Aasheim.
20 I think I'm going to rule the question out of order. The
21 purpose of the motion is to discuss the size. I don't think
22 we should decide the issue on the motion to suspend the rules.
23 We should either decide to discuss it or we should decide not
24 to discuss it. Therefore, I'm going to rule the question
25 out of order.

1 Mrs. Reichert.

2 DELEGATE REICHERT: I have a question too. I concur
3 that we should reconsider the size of the bicameral. It's
4 far too large as it is. As far as the unicameral is concerned,
5 if we suspend the rules, may we also go back and reconsider
6 the size of the unicameral?

7 CHAIRMAN GRAYBILL: This motion does not reach
8 the unicameral, but only reaches the bicameral. But, by
9 doing the same thing as we're doing here, you could reach
10 the unicameral.

11 Mr. Davis.

12 DELEGATE DAVIS: Mr. President. I have a question
13 similar to Mrs. Reichert's. Since the numbers that are going
14 to go on the ballot are very important, then may we go on
15 further back and reconsider whether we want them both on the
16 ballot or settle this issue right here. In other words --

17 CHAIRMAN GRAYBILL: You may not do that, Mr. Davis,
18 on Mr. Aasheim's motion. That's not the purpose of it. If
19 you want to make a motion to suspend the rules to consider
20 that, put it in writing and send it up. The rule on suspend-
21 ing the rules, which is number seventy-four, requires that
22 the purpose for the suspension of the rules be stated. The
23 purpose of the suspension of the rules we're asking for here
24 now, is to consider the size of the bicameral legislative
25 article. That's the only purpose.

1 Mrs. Payne.

2 DELEGATE PAYNE: May I ask Mr. Aasheim a question?

3 CHAIRMAN GRAYBILL: You may ask.

4 DELEGATE PAYNE: Would you include in your motion,
5 unicameral too? The size of the unicameral --

6 CHAIRMAN GRAYBILL: Mrs. Payne, he has not so
7 included it.

8 DELEGATE PAYNE: I'm asking him, would he -- would
9 he be willing to include that?

10 DELEGATE AASHEIM: If that would make a difference,
11 surely, but I thought maybe --

12 DELEGATE PAYNE: It would make a difference in the
13 way I vote, whether or not you're willing to open up the
14 unicameral and the bicameral to size both now.

15 DELEGATE AASHEIM: Mr. Chairman.

16 CHAIRMAN GRAYBILL: Mr. Aasheim.

17 DELEGATE AASHEIM: I started to explain that I will
18 be certainly agreeable to someone making that motion after
19 this. But, I was going to see if this would work first be-
20 fore we tried the other one. If that would make it more
21 palatable, I'll amend my motion to include consideration of
22 section two of the unicameral.

23 CHAIRMAN GRAYBILL: Section two, unicameral, is on
24 page thirteen. Section two of bicameral is on page forty-
25 one, or it's on page seven it's called here. That must be

1 reference to -- Unicameral is on page ten. Section two on
2 page ten. Mr. Aasheim, have you amended your motion?

3 DELEGATE AASHEIM: There are two page sevens in
4 this, I believe. I moved to consider section two, page seven
5 of the bicameral article.

6 CHAIRMAN GRAYBILL: Yes. Are you going to do the
7 same on the other?

8 DELEGATE AASHEIM: I'm going to find the page here
9 and then I'm going to --

10 CHAIRMAN GRAYBILL: It's page ten of the first half
11 of the book. Section two, page ten.

12 DELEGATE AASHEIM: I shall move also to consider
13 section two, page ten of the unicameral article.

14 CHAIRMAN GRAYBILL: Very well. Now the purpose of
15 the motion has been enlarged to include both the unicameral
16 and bicameral articles for the purpose of adjusting the mem-
17 bership in the legislative body therein. I have this motion
18 written before the Chair here, as required by the rules. It
19 now reads: I move to suspend the rules for the purpose of
20 considering an adjustment in the membership of the legislative
21 body, being section two, page ten of the unicameral and
22 section two, page seven -- in the back part of the book -- of
23 the bicameral. That's the motion. If I can read this cor-
24 rectly, you're saying, I move to amend the motion of Aasheim
25 to include reconsideration of -- I can't read that word, Mr.

1 Davis, -- as to whether there shall be alternatives on the
2 ballot to unicameral and bicameral. What's that word?
3 Whether there shall be a reconsideration of what?

4 DELEGATE DAVIS: Mr. President. I believe of the
5 question.

6 CHAIRMAN GRAYBILL: Of the question? All right.
7 Now, Mr. Davis, the Chair does not believe you have reached
8 anything yet. Mr. Aasheim has no motion -- The purpose of
9 a motion to suspend the rules must be specifically stated.
10 At my request this morning, he put it in writing and specifi-
11 cally stated. The purpose of it is for the purpose of con-
12 sidering an adjustment in the membership in the legislative
13 bodies. So, you can't amend anything he has got, that I can
14 see, to make it broader in that sense. Now, secondly, it
15 does not seem to me that that is the point at which the leg-
16 islative proposal reached the issue of whether we're going
17 to have an alternative on the ballot. That was done by a
18 separate motion which this body passed separately. Now, if
19 you want to make a motion to reconsider that, I certainly am
20 not going to stop you. But, I don't think you should mix
21 the two. It seems to me that the Chair will have to keep the
22 two separate. One is a matter of size; the other is a mat-
23 ter of how you're going to put it on the ballot.

24 DELEGATE DAVIS: Mr. President. May I make my
25 motion and then speak to it? Then, if you wish to rule me

1 out of order, that would be quite all right.

2 CHAIRMAN GRAYBILL: I'm going to rule any motion
3 out of order that isn't -- until this motion to suspend the
4 rules is taken care of.

5 DELEGATE DAVIS: In other words, it's your ruling
6 that no amendment can be made to Mr. Aasheim's motion except
7 the amendment someone else just made to it from another
8 section.

9 CHAIRMAN GRAYBILL: No, that's not what I'm ruling,
10 Mr. Davis. I'm ruling that Mr. Aasheim is making the motion
11 to suspend the rules on a specific purpose. Now, if you
12 want to stay within that purpose and on those sections, you
13 can go ahead and make your amendment. But, I'm saying that
14 the text that you sent up here raises an entirely different
15 question. If you want to raise that question, you certainly
16 may, but you can't raise it while we're discussing this
17 other subject. It's like being on another section. Do you
18 follow me?

19 DELEGATE DAVIS: Just briefly, Mr. President. It
20 seems like you have to open up that question too, because we
21 can't blank check that we're going to put something on the
22 ballot that we don't know what the numbers are going to be.
23 We've passed the numbers and said now put it on the ballot.
24 Now, we might come up with some very strange numbers with-
25 out the possibility of putting them on the ballot so you

1 couldn't reconsider that issue at the same time.

2 CHAIRMAN GRAYBILL: The Chair would certainly think
3 that if that happened, you should certainly make a motion
4 to suspend the rules to reconsider whether it goes on the bal-
5 lot. It doesn't seem we're at that point yet. I see two
6 issues. One, the numbers and the other one whether it goes
7 on the ballot. You certainly may raise your's, Mr. Davis,
8 but I think the Chair is going to rule that you have to be
9 talking about the two section twos that he's talking about
10 here. That isn't going to reach the issue you've raised.
11 I'm perfectly happy if you do it, and I'd suggest you read
12 Rule Seventy-four so that you get your purpose stated right,
13 and I'd be happy to have you do it. But, I have to rule that
14 we can only do one at a time. If you want to amend Mr.
15 Aasheim's motion on the specific point of numbers, fine.
16 Is there other debate?

17 Mr. Brown.

18 VICE PRESIDENT BROWN: Mr. President. I rise in
19 support of Mr. Aasheim's motion. I've heard a great deal of
20 concern about the size, but more important, people that are
21 very experienced in reapportionment say that we're in grave
22 danger by the narrow range of members. So, I think it's
23 vital that this body support Mr. Aasheim.

24 CHAIRMAN GRAYBILL: Mr. Campbell.

25 DELEGATE CAMPBELL: I rise to support Delegate

1 Aasheim in his motion to suspend the rules. This week, in
2 my area, we found there was a lot of resentment on the num-
3 bers being too high. They asked us to do everything we could
4 to reconsider them. I know that I voted for them. I regret
5 that decision now, and I certainly would appreciate the
6 opportunity to reconsider the matter. Thank you.

7 CHAIRMAN GRAYBILL: Is there further debate on
8 the issue of suspending the rules?

9 Mrs. Bates.

10 DELEGATE BATES: Mr. Chairman. I'm just wondering
11 if we open this for reconsideration, how many more of the
12 articles will we be opening and how many more will we then
13 feel we have to give the other delegates the same courtesy?
14 It is true that at the time the legislative article was
15 passed, I felt rather disappointed. But, in evaluating the
16 entire article, there are many reforms and I feel quite
17 satisfied with the article even though I do not agree with
18 all of it. I'm just wondering, if we go ahead on this re-
19 consideration, are we then going to give each person that
20 wants the same right to reconsider all the other articles,
21 the same opportunity? I feel that we may be here for many
22 extra days if we do.

23 CHAIRMAN GRAYBILL: Mr. Foster.

24 DELEGATE FOSTER: Mr. Chairman and fellow delegates.
25 I think that we have to weigh very carefully the merits of

1 whether we're going to take this extraordinary action in sus-
2 pending the rules. If we set a precedent for suspending the
3 rules in this case, then I think it's only fair to realize
4 that other issues that come up at this stage also warrant
5 similar precedence of suspending the rules. I personally was
6 very happy with the way the size came out, but I think that
7 everyone has to weigh carefully whether, in fact, we want to
8 open up these questions again. We spent lengthy debate on
9 trying to resolve the numbers for both of the sections of the
10 article and I think that for us to go back again and open up
11 this whole question, is unwise. It's simply a matter of
12 being consistent, and I think that we will be setting a pre-
13 cedent which we may regret later on. Mr. President.

14 DELEGATE HOLLAND: Mr. President and fellow dele-
15 gates. I have kept careful note and Mr. Foster and I have
16 disagreed on everything so far. I'm rising in support of
17 what he has just said. This convention has deadlines to
18 meet. We've got, as I figure it, approximately two weeks.
19 This matter -- I'm not like Mr. Foster. I'm not happy with
20 the numbers, but this convention has got to handle its
21 business expeditiously. The matter, as I remember, was hard
22 fought on the floor and fully debated. We resolved it and
23 now we're coming back, not for a new proposition, but to hash
24 over the same old thing. It should have been covered on re-
25 consideration. If we open it up, we're going to be opening

1 up on everything that has been won or lost by various dele-
2 gates here. I strenuously urge this group to reject this
3 motion to suspend the rules. If we do it on this, we're going
4 to be doing it on every critical item in this constitution
5 that we've already resolved.

6 CHAIRMAN GRAYBILL: Mr. Gysler.

7 DELEGATE GYSLER: Mr. Chairman. I rise to support
8 the motion to suspend the rules for this purpose. I think
9 the people who are saying that we are going to open this up
10 for everything, aren't really stopping to consider the fact
11 of just how important this issue really is. This is one of
12 the places where the people at home have really come out and
13 said to me on my weekends home, that that's too many. We
14 want real representation, but let's not let this thing get
15 so far out of hand and have it locked in, that we regret it.
16 I feel we're going to make a very serious mistake if we
17 don't go along and open this up again and do a job for the
18 people.

19 CHAIRMAN GRAYBILL: Mrs. Erdmann. Before you speak,
20 would those who are not speaking try to sit down when they're
21 not busy? It's hard for the Chair to tell who's up.

22 Mrs. Erdmann.

23 DELEGATE ERDMANN: Mr. Chairman. I support Mags
24 Aasheim in his request for reconsideration -- I mean suspen-
25 sion of rules. I think this is a very vital matter and I

1 believe it shouldn't take too much time. I think we should
2 allow anyone who is convinced that it is a vital issue and
3 of vital significance, I think we should extend them that
4 courtesy and then you can dispense with it with a vote, yes
5 or no.

6 CHAIRMAN GRAYBILL: Very well. The issue is on
7 Mr. Aasheim's motion to suspend the rules for the purpose of
8 considering an adjustment in the membership of the legislative
9 body in section two on page ten of the unicameral and in
10 section two on page seven -- the back part -- of the bicameral
11 article. So many as are in favor of Mr. Aasheim's motion
12 to suspend --

13 DELEGATE AASHEIM: May we have a roll call vote?

14 CHAIRMAN GRAYBILL: All right. We'll have a roll
15 call vote. So many as are in favor of suspending the rules,
16 vote Aye. So many as are opposed, vote No. Have all the
17 delegates voted? Does any delegate wish to change his vote?
18 Please take the ballot.

19 Aasheim	- Aye	Ask	- Nay
20 Anderson, J.	- Nay	Babcock	- Aye
21 Anderson, O.	- Abs	Barnard	- Aye
22 Arbanas	- Abs	Bates	- Aye
23 Arness	- Nay	Belcher	- Abs
24 Aronow	- Nay	Berg	- Aye
25 Artz	- Aye	Berthelson	- Aye

1	Blaylock	-	Aye	Furlong	-	Aye
2	Blend	-	Aye	Garlington	-	Aye
3	Bowman	-	Aye	Graybill	-	Aye
4	Brazier	-	Aye	Gysler	-	Aye
5	Brown	-	Aye	Habedank	-	Aye
6	Bugbee	-	Aye	Hanson, R. S.	-	Aye
7	Burkhardt	-	Aye	Hanson, R.	-	Nay
8	Cain	-	Aye	Harbaugh	-	Aye
9	Campbell	-	Aye	Harlow	-	Nay
10	Cate	-	Aye	Harper	-	Aye
11	Champoux	-	Abs	Harrington	-	Aye
12	Choate	-	Aye	Heliker	-	Aye
13	Conover	-	Aye	Holland	-	Nay
14	Cross	-	Aye	Jacobsen	-	Aye
15	Dahood	-	Aye	James	-	Aye
16	Davis	-	Nay	Johnson	-	Aye
17	Delaney	-	Nay	Joyce	-	Aye
18	Driscoll	-	Aye	Kamhoot	-	Nay
19	Drum	-	Aye	Kelleher	-	Nay
20	Eck	-	Aye	Leuthold	-	Aye
21	Erdmann	-	Aye	Loendorf	-	Aye
22	Eskildsen	-	Abs	Lorello	-	Aye
23	Etchart	-	Nay	Mahoney	-	Nay
24	Felt	-	Aye	Mansfield	-	Aye
25	Foster	-	Nay	Martin	-	Nay

1	McCarvel	- Aye	Scanlin	- Aye
2	McDonough	- Aye	Schiltz	- Aye
3	McKeon	- Aye	Siderius	- Aye
4	McNeil	- Aye	Simon	- Aye
5	Melvin	- Aye	Skari	- Abs
6	Monroe	- Nay	Sparks	- Aye
7	Murray	- Aye	Speer	- Aye
8	Noble	- Aye	Studer	- Aye
9	Nutting	- Abs	Sullivan	- Aye
10	Payne	- Aye	Swanberg	- Aye
11	Pemberton	- Nay	Toole	- Aye
12	Rebal	- Aye	Van Buskirk	- Aye
13	Reichert	- Aye	Vermillion	- Nay
14	Robinson	- Aye	Wagner	- Nay
15	Roeder	- Aye	Ward	- Abs
16	Rollins	- Nay	Warden	- Aye
17	Romney	- Abs	Wilson	- Abs
18	Rygg	- Nay	Woodmansey	- Aye

19 CHAIRMAN GRAYBILL: Mrs. Bugbee, for what purpose
20 do you rise? Mrs. Bugbee's button please, Rosemary. No,
21 push her button so she can talk, Rosemary. (Laughter)

22 DELEGATE BUGBEE: Mr. Chairman, I just want to be
23 put down on the record as being present. I did vote.

24 CHAIRMAN GRAYBILL: Will the journal show Mrs.
25 Bugbee's presence?

1 CLERK HANSON: Mr. Chairman, sixty-nine voting Aye,
2 twenty-one voting No.

3 CHAIRMAN GRAYBILL: Sixty-nine having voted Aye,
4 and twenty-one voting No, and sixty-nine being over both two-
5 thirds and fifty-one, the motion is adopted. The rules will
6 be suspended for your purpose, Mr. Aasheim. You have the
7 floor.

8 DELEGATE AASHEIM: Mr. President. I want my motion
9 to read: I move to amend section two of the legislative
10 article, being page seven of the back section. I'm going to
11 make a motion for size and you can start from there.

12 CHAIRMAN GRAYBILL: All right, Mr. Aasheim. Just
13 a moment. You have to move to reconsider it, right?

14 DELEGATE AASHEIM: I was trying to get away from
15 that motion.

16 CHAIRMAN GRAYBILL: No, I think you have to move
17 to reconsider it. Are you on the prevailing side?

18 DELEGATE AASHEIM: Yes, I was.

19 CHAIRMAN GRAYBILL: All right, now go ahead. Put
20 that in your motion.

21 DELEGATE AASHEIM: Having been on the prevailing
22 side -- well, I think I was. I was on the prevailing side
23 to adopt the section, I'm sure.

24 CHAIRMAN GRAYBILL: Very well.

25 DELEGATE AASHEIM: Having voted on the prevailing

1 side, I move to reconsider our action in adopting section two
2 of the legislative article of the bicameral section, being
3 page seven of our bicameral section.

4 CHAIRMAN GRAYBILL: All right. The motion is --
5 I think we have to take this a step at a time, Mr. Aasheim.
6 The motion is to reconsider the bicameral article on page
7 seven in back of the book that you're looking at, section two.
8 Of course, the purpose is the same, to change -- to adjust --
9 the membership. So, the motion of Mr. Aasheim is now to
10 reconsider section two on page seven of the legislative art-
11 icle for the purpose of considering an adjustment of the
12 membership. So many as are in favor of that, say Aye.

13 DELEGATES: Aye.

14 CHAIRMAN GRAYBILL: Opposed, No.

15 DELEGATES: No.

16 CHAIRMAN GRAYBILL: It's adopted. Now, Mr. Aasheim,
17 do you want to make your proposal?

18 DELEGATE AASHEIM: Mr. President. I'm open to
19 suggestion here. As you know, my original recommendation was
20 for a forty-eighty legislative body. I'm being realistic.
21 I realize that we have areas here who are going to be unhappy
22 with a small legislature, and we have areas who are going to
23 be unhappy with a large one. So, I'm going to make this
24 motion that we -- On line fourteen on page seven, insert in
25 place of fifty-three, fifty and in place of fifty, forty-five.

1 On line fifteen, in place of one hundred six, one hundred; in
2 place of one hundred, ninety. I'm not so naive as to say that
3 you're going to adopt this without talking, so the floor is
4 yours.

5 CHAIRMAN GRAYBILL: Very well. Mr. Aasheim moves
6 to amend the bicameral section two size article by making the
7 size of the senate fifty and forty-five -- maximum fifty and
8 minimum forty-five -- and the size of the house maximum one
9 hundred and minimum ninety. Is there discussion?

10 Mr. Davis.

11 DELEGATE DAVIS: Mr. President. I apparently made
12 the original motion that was so ill-advised at the time. How-
13 ever, we've come quite a ways since that time. We've really
14 got a pretty clear cut situation. Now, Mr. Aasheim's motion
15 you couldn't live with, but does it really change anything
16 that much? If you really want to cut it down, you could cut
17 it down to half or something, but he knows that you've got to
18 have representation. Yesterday, or Saturday, we passed the
19 Revenue and Taxation Bill. We said everything is going to be
20 taxed by the state, and it's going to be worked out by a leg-
21 islative group, and we're going to determine the size of this
22 legislative group. Somebody is going to have some taxation
23 without too much representation. There is the geographical
24 problem you've got in this big state. You've got five count-
25 ies in many districts right now. You can look around this body

1 of a hundred seats and say which one do we want to eliminate.
2 Now, I don't mean individuals personally, or else there would
3 be a lot of volunteers for that, but which area do you want
4 to eliminate or consolidate? We've got the anti-diversion
5 of highway funds. I imagine everyone heard about as much
6 discussion over the weekend of that, as they did size of the
7 legislative body. Three-fifths can change it. If you cut
8 that number down, that really consolidates the power in a
9 lesser number of people. Maybe that's what you're really
10 driving at. You got your state indebtedness limitations we
11 talked about in this constitution. Now, you're going to cut
12 that down to a lesser number of people that have a right to
13 have a representative up here, or covering a much larger area.
14 You must be careful not to get into a situation of taxation
15 without representation, I think, in all these areas. We
16 passed the environmental program. That's left to the legis-
17 lature to implement. How big a legislature do you want? I
18 know, depending on which side you're on, you may want to knock
19 out many different areas. The reclamation is left solely up
20 to the legislature. You want a broad spectrum in this leg-
21 islature to let everybody be heard, or do you want to be
22 small? The water rights -- what's beneficial use for recreat-
23 ion, domestic, municipality? That's left solely up to the
24 legislature. What size legislature? Do you want it to be
25 truly representative of Montana or do you not? The legis-

1 lature is also going to have something to do approving its
2 own size. So, if you have a smaller body, they can meet in
3 the first session, depending on the complexion of the legis-
4 lature. We don't know. They can cut it down in the guise
5 of economy, to cut it down the first go round. I think the
6 biggest argument on it is right now. If this constitution
7 should pass, you have a legislative assembly of one hundred
8 in the house and fifty in the senate that has been -- met the
9 test of the federal court. We could go ahead without spending
10 all this time fighting another reapportionment bill, and do
11 all the other jobs we're assigning to the legislature without
12 starting right off and spending all their time trying to ad-
13 just what size they're going to be. A lot of effort went
14 into that at the last legislature, and they came up with the
15 size we're sitting on right now. Now, you say this size isn't
16 any good. I realize and certainly respect the differences of
17 opinion on this, because I know they're real sincere. But,
18 this is the size you're going to get if they defeat this whole
19 constitution. We're right back with the hundred that has met
20 the court test, in the house, and fifty in the senate. I
21 don't think you're going to be able to take away from the peo-
22 ple, their local control of taxation and put it in a board
23 with the state. I don't think you're going to take away all
24 these debt limitations they've had all the time. I don't
25 think you're going to let them dip into the highway funds after

1 they've voted the anti-diversion bill, and then at the same
2 time say, we're not going to let you get back in there too
3 far. We're going to cut down the representation too, and then
4 you're really creating a lot of power in a few people. I
5 think, if it comes to a choice on the ballot -- Naturally, you
6 want a smaller size to make it appealing. I think the uni-
7 cameral on the bicameral legislative fight in this body, they
8 are both trying to make their article appealing. They are
9 trying to do it at the expense of the people of Montana to
10 keep them from getting fair representation. As I've said
11 before, I don't care which they adopt, but we should have
12 fair representation and go about it on the merits. I submit
13 that if you cut it down to less than a hundred and less than
14 fifty in the house -- or a hundred in the unicameral you have
15 now -- you're not going to give representation in this great
16 state of Montana that's divided by rivers, mountain ranges,
17 all sorts of different problems. The little towns have dif-
18 ferent problems than the big towns. The little ranches have
19 different problems from the big ranches. We have little indus-
20 try competing with big industry. We have a complex of problems
21 that deserves and justifies any expense you would have in the
22 little difference this amendment would make. Thank you.

23 CHAIRMAN GRAYBILL: Mr. Blaylock.

24 DELEGATE BLAYLOCK: Mr. President. I have a great
25 deal of respect for Mr. Davis' feelings on this thing. I know

1 that, as he has said of us, that we are sincere on this. I
2 know that he is sincere. I think I should say, at this time,
3 that I'm very much interested in seeing the bicameral proposal
4 passed. Insofar as he has said that we are pushing our own
5 cause, at least in my respect, this is true. I believe that if
6 we do have somewhat smaller numbers on this bicameral proposal,
7 that we will have an easier job of selling it and continuing
8 the bicameral system here in Montana. I do think, Carl, that
9 if we can keep the bicameral system, then certainly we do
10 have, if we have the senate, then we have that body of men
11 over there who will continue to represent the areas of Montana,
12 and would provide more representation and more thoughtful con-
13 sideration to some of the issues which you have raised that
14 we have already put into the constitution. So, I support Mr.
15 Aasheim's motion to accept this. I certainly do want to keep
16 a floor on this. I don't want to ever have it where the leg-
17 islature can lower this down so far that we really do strip
18 the rural areas of Montana from representation. I think that
19 having it from forty-five to fifty on the senate side, and
20 from ninety to a hundred does represent a good compromise and
21 these are figures that will be easier to sell to the people
22 of Montana. I support Mr. Aasheim's motion.

23 CHAIRMAN GRAYBILL: Mrs. Bates.

24 DELEGATE BATES: Mr. Chairman. I, too, support Mr.
25 Aasheim's motion. I, too, feel that we need adequate represent-

1 ation and I feel this will give us a continued adequate repre-
2 sentation. Thank you.

3 CHAIRMAN GRAYBILL: Mr. Etchart.

4 DELEGATE ETCHART: Mr. Chairman. I support a smaller
5 bicameral legislative assembly, but I would like to further
6 amend Mr. Aasheim's motion by deleting his numbers forty-five
7 and ninety, and inserting in lieu thereof forty and eighty.

8 CHAIRMAN GRAYBILL: You're making the fifty to
9 forty and the hundred to eighty, is that right?

10 DELEGATE ETCHART: Yes, sir.

11 CHAIRMAN GRAYBILL: Mr. Etchart has proposed an
12 amendment to section two or actually to Mr. Aasheim's amend-
13 ment which would lower the bottom numbers to forty and to
14 eighty. In other words, a house would be eighty to a hundred
15 and the senate would be forty to fifty. Is that right, Mr.
16 Etchart? Do you wish to discuss it?

17 DELEGATE ETCHART: Yes. I think that really if we
18 are going to make a significant change, just changing fifty
19 to forty-five keeps us in a pretty narrow range. I think if
20 we drop it down to forty, this would be an eighty member house,
21 forty member senate, one hundred twenty member legislature,
22 it would be a pretty attractive size bicameral body especially
23 when we combine it with our single member district concept
24 which we've already adopted. I personally, am quite in favor
25 of the bicameral system and I would like to see the most at-

1 tractive bicameral proposal come out of this body. Incident-
2 ally, I have heard that this was the committee report, forty
3 and eighty, and I believe this would be a very fine number.

4 CHAIRMAN GRAYBILL: Mr. Ask.

5 DELEGATE ASK: Mr. Chairman. I rise in opposition
6 to both Mr. Etchart's and Mr. Aasheim's proposed amendments
7 reducing the number. Let's stop and look at this to our rural
8 areas. It's not just the numbers; it's how you're going to
9 make up this area. Say you take -- say you have eighty house
10 of representative. You're going to take twenty off of what
11 we have now, so how are you going to reapportion that? You're
12 going to have to take these areas and attach them onto a city
13 near you, or you're going to have districts running five hun-
14 dred miles long to stay in the rural areas. I say that the
15 rural areas of Montana are going to completely lose represent-
16 ation on this proposal, either one of the numbers. Before
17 reapportionment, we had a fifty-six senators and there weren't
18 too many complaints about that. We used to have a hundred
19 and four in the house here and I don't recall any complaints.
20 Just because we're going to have annual sessions, is no sign
21 it's going to cost that much more money to have a larger bi-
22 cameral legislature. I submit that if we go at least to this
23 last reduced number here, the rural parts of Montana are going
24 to completely lose any representation, because they are going
25 to have to be attached to an urban area near them, and who's

1 going to get elected? It'll be someone from the larger cities
2 in this particular area. I, therefore, strenuously oppose
3 these changes in the numbers.

4 CHAIRMAN GRAYBILL: Mr. Joyce.

5 DELEGATE JOYCE: Mr. Chairman. I sent a proposed
6 amendment up to the Chair. Is it in order?

7 CHAIRMAN GRAYBILL: If I read it correctly, it refers
8 to page ten, which is the unicameral article, which we are
9 not debating now. We're debating the bicameral.

10 DELEGATE JOYCE: I just thought we were debating
11 both of them.

12 CHAIRMAN GRAYBILL: We're only debating page seven
13 of the --

14 DELEGATE JOYCE: In any event, may I propose this
15 substitute motion to all motions pending then? I haven't got
16 it in writing, of course.

17 CHAIRMAN GRAYBILL: All right. I have it up here.
18 You want to amend section two on page seven.

19 DELEGATE JOYCE: Let's make it, instead of seven,
20 whatever the bicameral is.

21 CHAIRMAN GRAYBILL: That's the bicameral, my friend.
22 There's a second page seven in back of the yellow sheet here.
23 Okay? Can you find it?

24 DELEGATE JOYCE: Yes.

25 CHAIRMAN GRAYBILL: Now, the trouble with your amend-

1 ment that you sent up, the numbers that you sent up don't
2 appear there. Why don't you tell me what you want to do to
3 section two?

4 DELEGATE JOYCE: Here's what I propose to do. I
5 propose to amend section two to provide that the size of the
6 legislature -- I'm reading the section as it currently is --
7 shall be provided by law, but the senate shall not have more
8 than fifty-three nor fewer than fifty members, and the house
9 shall have not less than a hundred and six nor fewer than one
10 hundred and six members. Then, I propose to add the following
11 language: Until the year 1982, and after which time the size
12 of the legislature shall be provided by law, but in no event,
13 shall be fewer than eighty members in the house nor forty
14 members in the senate. May I speak to the motion?

15 CHAIRMAN GRAYBILL: First of all, I want that written
16 out and sent up, Mr. Joyce.

17 DELEGATE JOYCE: May I ask the Chair a question?

18 CHAIRMAN GRAYBILL: Yes, sir.

19 DELEGATE JOYCE: What's your plan? It's 12:00 o'
20 clock noon.

21 CHAIRMAN GRAYBILL: My plan is to debate this article.
22 Let's go. I see what you want to do, and I'm going to let you
23 do it, but I just cannot -- we're talking about substance here
24 and the Chair must have in writing what you people intend to
25 do. Otherwise, these things never get into the journal.

1 (Tape Changed)

2 CHAIRMAN GRAYBILL: Now, the Chair is going to ac-
3 cept an amendment from Mr. Joyce, and I must put the amendment
4 before we discuss it. For what purpose do you rise, Mr. Felt?

5 DELEGATE FELT: I thought, while we were waiting
6 for that to come up, that I could squeeze in a few comments
7 on the previous motion and save --

8 CHAIRMAN GRAYBILL: No, you're out of order.

9 DELEGATE FELT: All right. I didn't know you had
10 received the other motion yet. That's fine.

11 CHAIRMAN GRAYBILL: I'm sorry, ladies and gentlemen,
12 but I think we must take these things a step at a time. We
13 have three motions up and, unless I have them here, it gets
14 very difficult. We'll quit after a while but let's see if
15 we can't at least adjust one or two of these items and get
16 the sense of the body before we have lunch. Now, Mr. Joyce,
17 you want this to replace section two, is that it?

18 DELEGATE JOYCE: Yes, sir.

19 CHAIRMAN GRAYBILL: Mr. Joyce makes a motion to
20 delete section two in its entirety. This is bicameral and put
21 in place thereof the following: The size of the legislature
22 shall be provided by law, but the senate shall not have more
23 than fifty-three nor fewer than fifty members and the house
24 shall not have more than a hundred and six nor less than a
25 hundred members until after 1982. Thereafter, the size of the

1 legislature shall be set by law at no less than forty members
2 of the senate and eighty members of the house. The purpose
3 of this amendment appears to be to leave the present numbers
4 in until 1982. After that, it's to be left up to the legis-
5 lature with a floor of forty and eighty in the bicameral
6 article.

7 Mr. Joyce.

8 DELEGATE JOYCE: Mr. Chairman. We debated this
9 at length the other night and I spoke in favor of Mr. Davis'
10 motion to set these figures as were finally adopted by the
11 assembly. His theory was that unless the size -- We're
12 submitting to the people the issue of whether they're going
13 to have unicameral or bicameral. No one now knows how they
14 are going to decide. Further than that, we are adopting the
15 theory of single member districts and nobody knows how the
16 single member districts are going to be arrived at. There-
17 fore, we are completely in the dark as to how the size and
18 shape of the legislature is going to be hereafter. The reason
19 for his amendment, as I understood it, was to at least make
20 the unicameral or the situation large enough, so that the
21 rural people would have a chance to have representation in the
22 legislature if we adopted the bicameral system. It seems to
23 me that until such time as we know the answer to how the state
24 is going to be apportioned under the single member districts,
25 that if we leave them at this figure until after the year 1982

1 when the state is reapportioned again, if they vote unicameral,
2 they may vote it out and have bicameral. At any rate, at
3 that time, the people will have some idea as to how the legis-
4 lature is going to be apportioned. Thereafter, it could be
5 reduced. Mr. Davis' point, as I understood it in talking to
6 him, and why I spoke in support of his motion the other even-
7 ing, was that presenting a small bicameral proposal to the
8 people of Montana, would compel the rural people to vote for
9 unicameralism so that they would have a sufficient number to
10 have some voice in the state government. He wanted to give
11 the rural people a fair chance to still vote for bicameralism,
12 and have a sufficient size legislature so they would have
13 some representation until such time as they see how the single
14 member districts were going to be adopted. He poses a very
15 real problem. If you make the size of the legislature small,
16 then, necessarily, you must have more people per represent-
17 ative. He lives in a large county in size, small in numbers.
18 It's adjacent to the county in which I live. He feels that if
19 the situation arises where his county gets lumped in with a
20 portion of our county, that that would present a real problem
21 for his people ever having a representative. It isn't a
22 situation peculiar to Beaverhead and Silver Bow. It applies
23 also to those counties in eastern Montana where there is
24 sparse population and they are adjacent to a metropolitan
25 center. It seems to me, and I submit it for the benefit of the

1 delegates, that until the year 1982, this might be a reasonable
2 compromise. We would then see whether or not we're going to
3 have a unicameral system and whether it's going to be adopted.
4 We would also see how the single member district system works,
5 and then after the year 1982, the people of Montana, acting
6 through their legislature, could reduce the size of the leg-
7 islature if they so desired and they would have some experience
8 on which to draw. That's why I offered the substitute motion.

9 CHAIRMAN GRAYBILL: Very well. The question arises
10 on the --

11 Mr. Wilson.

12 DELEGATE WILSON: Mr. President. I rise in oppos-
13 ition to Mr. Joyce's motion. Perhaps I should be the last
14 one to get up here and make any mention of numbers as far as
15 the rural areas are concerned, because this is exactly what I
16 represent. In the discussions that followed the adoption of
17 this proposal the other day, we came to the conclusion that
18 we were not providing sufficient alternatives for the people
19 to consider as far as numbers were concerned. I think that
20 we can all agree that at the present time, that you have
21 representation of fifty senators and a hundred representatives.
22 For all practical purposes, for the next session or two, that
23 is exactly where it will stay. At the same time, we must con-
24 sider an alternative proposal that will allow the people to
25 consider this when they're considering unicameralism versus

1 bicameralism. This will give them enough option to take a
2 look into the future and see where, if it is desirable, they
3 can move the numbers down, if they see a sufficient necessity
4 to do this. If we don't move our numbers to give greater
5 flexibility for the voters, I don't think we're providing a
6 fair alternative to the voters to decide on between unicameral-
7 ism and bicameralism. Thank you, Mr. President.

8 CHAIRMAN GRAYBILL: Mr. Brown.

9 VICE PRESIDENT BROWN: Mr. President. I rise in
10 support of Mr. Etchart's motion and in opposition to Mr.
11 Joyce. As far as the remarks of Delegate Ask and Delegate
12 Davis, if they want a hundred members and fifty senators,
13 they can have them, but we're now telling future generations
14 that if they want to cut down, they can't. We're writing
15 this constitution -- or I hope we are -- to be flexible. If
16 they want large bodies, they can have them, but if they want
17 to shorten this down in the future, they can do it. I agree
18 with Mr. Wilson that we should give the people a choice in
19 the future. So, I ask this body to support Mr. Etchart and
20 to put flexibility into this constitution. Thank you, Mr.
21 President.

22 CHAIRMAN GRAYBILL: Mr. Romney.

23 DELEGATE ROMNEY: Mr. Chairman. I support the
24 amendment of Mr. Joyce, not because I'm enamored with it, but
25 because it gives us an opportunity to avoid the horrible al-

1 ternative of the Etchart alternative. Mr. Chairman, I tell
2 you that if we have legislatures the size envisioned in those
3 amendments of Mr. Etchart and the other one, people in the
4 smaller counties are not going to have any representation. It
5 doesn't make so much difference in the big counties or big
6 districts where the population is large, because they will
7 continue whether you have small or large. They will have
8 proportional voice, but if you have a large legislature, the
9 people in the rural areas will have a voice. If you cut down
10 the size, we're going to have the people in the smaller,
11 rural areas lose everything except the squeak. We won't have
12 a voice. I don't like to see that. I think this was a
13 terrible mistake to bring this back. It's apt to cause us to
14 be bringing back things all through the remainder of the ses-
15 sion. I think it was disgressed thoroughly once and it was
16 decided. Now, we have that this decision is overturned. What
17 if we would want to bring back some other things like the
18 probate and the ombudsman and various others? If we start
19 bringing those matters back, we'd cause all sorts of discussion.
20 We may not have enough time.

21 CHAIRMAN GRAYBILL: Mr. Romney, you're debating the
22 issue of whether or not we should have reconsidered. I'd
23 be glad to have you continue the debate only on the matter of
24 the numbers please.

25 DELEGATE ROMNEY: I was endeavoring to show the

1 ramifications of this nefarious situation. (Laughter)

2 CHAIRMAN GRAYBILL: One ramification is you're
3 going to be out of order unless you stick to the point.

4 DELEGATE ROMNEY: In view of this situation, I'm
5 unable to discuss the matter thoroughly and I will vote for
6 the Joyce amendment because I'm handcuffed to it. I want to
7 go back to the other original decision of the convention.

8 CHAIRMAN GRAYBILL: Very well. Ladies and --
9 Mr. Davis.

10 DELEGATE DAVIS: Mr. President. I haven't spoken
11 to the Joyce amendment. I would support Mr. Joyce's amend-
12 ment as an attempt to make a reasonable compromise in here.
13 I would like to clarify the fact that Mr. Joyce thought my
14 thinking was that it would compel people to vote for the
15 unicameral. My thinking is that it would compel people to
16 vote against the constitution, They've got a hundred now;
17 they've got representation now; they've got their own local
18 taxation now; they have so many reasons why this change is
19 going to be very difficult. If you say we're going to cut
20 your numbers out but we're not going to tell you which ones
21 are going to go, we're going to leave that up to the legis-
22 lature. But, they know very well that the cities control the
23 votes in the state of Montana -- seven cities have fifty some
24 percent of the vote. Let's face the fact. These people are
25 going to say, these seven cities can go up and depending on

1 who they elect, they can cut the number down. That's why I
2 think we should have a floor. I think you've got to be real-
3 istic on this. As I said before, we want to get some harmony
4 throughout the state. We don't know what will be, and I agree
5 on the flexibility thing. I would support Mr. Joyce's amend-
6 ment to keep them from fiddling with these numbers for the
7 next ten years -- if they pass this thing with all the things
8 that we've left for the legislature to do, so they don't have
9 to continually try to reapportion themselves until after the
10 next census is taken, when, they can go ahead and make the
11 adjustments. Thank you.

12 CHAIRMAN GRAYBILL: Mrs. Eck.

13 DELEGATE ECK: Mr. Chairman. I think that we also
14 have a good number of voters in the state who are concerned
15 about maximum size. As I understand it, Mr. Joyce's amendment
16 states that after 1980 or 1982 -- whenever it is -- there will
17 be no maximum size. I think this would terrify a lot of vot-
18 ers, because the tendency has always been to increase rather
19 than to decrease these bodies. Thank you.

20 CHAIRMAN GRAYBILL: Very well. Members of the
21 body, the issue is on Mr. Joyce's substitute amendment. It
22 reads as follows: The size of the legislature shall be pro-
23 vided by law, but the senate shall not have more than fifty-
24 three nor fewer than fifty members, and the house shall not
25 have more than a hundred and six nor less than a hundred mem-

1 bers until after 1982. Thereafter, the size of the legislature
2 shall be set by law at no less than forty members of the sen-
3 ate and eighty members of the house. I'm sorry, Mr. Joyce,
4 you can't close. You've closed. So many as shall be in favor
5 of the Joyce amendment, say Aye.

6 DELEGATES: Aye.

7 CHAIRMAN GRAYBILL: Opposed, No.

8 DELEGATES: No.

9 CHAIRMAN GRAYBILL: The Noes have it and so ordered.
10 Now, we're debating Mr. Etchart's motion that the range in
11 the senate in the bicameral be forty to forty-five -- no,
12 that the range in the senate be forty to fifty, and the range
13 in the house be eighty to a hundred. Actually, he amended Mr.
14 Aasheim's motion to lower the minimum to forty for the senate
15 and to eighty for the house. That's Mr. Etchart's amendment
16 and that's what we're going to debate now. Is there further
17 discussion?

18 DELEGATE DAVIS: I'd like a roll call vote.

19 CHAIRMAN GRAYBILL: Mr. Davis would like a roll
20 call vote. The issue is on Mr. Etchart's amendment to lower,
21 in the senate, the minimum to forty from forty-five and, in
22 the house, the minimum from ninety to eighty. This is the
23 minimum only. Mr. Etchart's amendment to Mr. Aasheim's amend-
24 ment. Mr. Foster, for what purpose do you rise?

25 DELEGATE FOSTER: Can I speak on the motion? I rose

1 prior to the time --

2 CHAIRMAN GRAYBILL: All right. Cancel the vote out,
3 Mr. Clerk. You may speak, Mr. Foster.

4 DELEGATE FOSTER: Mr. Chairman. I think this is an
5 extremely important question that's before this body. For
6 one thing, the broad range is desirable for purposes of de-
7 termining the number of legislators to be chosen. At the same
8 time, I think you should realize that there will be those in
9 the course of the election which is before us, that will use
10 the lower limits for their advantage, and there will be those
11 that will use the higher limits for their advantage. Let me
12 point out that in the rural areas, people are going to look
13 at that forty at the bottom, and they're going to say, now
14 what is this going to do to the senate? I'm speaking directly
15 now to the senator that happens to be representing that
16 present district. He will be inclined to look at what it's
17 going to do to his particular chances for reelection, and his
18 voice to the people will be dependent upon that point. I
19 submit that, in most cases, the people that are looking to a
20 larger district to run for, are going to be opposed to this
21 side. There will be others that will say that, in fact, you
22 have a limit of a hundred and fifty, which is essentially what
23 we had before, that will say that the legislature is going to
24 keep it at the upper limit. They will use the same argument
25 that is presently being used that essentially, you haven't

1 changed the size at all. I think that what we've done in
2 going to this amendment, is essentially taken the worst of
3 both proposals. We've got those that are going to be concerned
4 because the body is going to be too small and they're going
5 to lose representation, and we still have those that are go-
6 ing to be concerned that if it's too large, it's going to be
7 expensive. I submit that we really haven't improved anything.
8 In fact, we have made it worse by giving this broad limit for
9 the size. Thank you, Mr. Chairman.

10 CHAIRMAN GRAYBILL: Is there other discussion?
11 Mr. Felt.

12 DELEGATE FELT: Mr. Chairman. I am rising to support
13 the amendment of Mr. Etchart, and also the original motion of
14 the chairman of the committee on the legislature, Mr. Aasheim.
15 The present situation is, I think, that we have twenty-three
16 senatorial districts. With the amendments proposed and with
17 the single member feature, we would have forty at the minimum
18 and we could have fifty. So, as far as people from rural areas
19 are concerned, they would find that, by and large, they would
20 have more people living in a rural setting, making their own
21 living from that type of activity, than they are likely to
22 have at the present time. The house membership has been set
23 at one hundred by the last legislature, and it was under that
24 proceeding which was approved by the court, that we were able
25 to be elected. As I recall, the court did not state that they

1 would necessarily approve it for a legislative session, but
2 that due to the short period of time available, they did ap-
3 prove it for purposes of proceeding with this election. I
4 think we should keep in mind that the basic purpose of the
5 committee that worked so hard on this, was to devise the
6 very best type of bicameral legislative body and the very
7 best type of unicameral legislative body that they were able
8 to develop. I think they did a fine job. Our departures
9 from their report have somewhat weakened both, but here we
10 have a proposal by the chairman of that committee, who re-
11 ferred to the fact that his actual first choice were these
12 minimum figures of forty and eighty, but he did not feel that
13 it was expedient to make the effort for that size, so he
14 phrased his motion as he did. It is now in our power, if we
15 wish to accept this amendment, to go along with what, I believe,
16 he would have considered to be his own druthers if he could
17 have them, and we have the maximum sizes which are reasonable.
18 I'm very hopeful that all of us, not thinking of ourselves
19 as representing either urban or rural interests, but recogniz-
20 ing that each do have legitimate interests, will try our
21 best to present this to the people in such a way that they are
22 being offered the very best possible bicameral legislative
23 structure and the best possible unicameral. I think we are
24 getting toward that and I hope that the amendment of Mr.
25 Etchart and the motion of Mr. Aasheim will both be accepted in

1 that light. Thank you.

2 DELEGATE BATES: Mr. Chairman. I rise in opposition
3 to Mr. Etchart's motion and support Mr. Aasheim's. I feel
4 that a body of forty is not an adequate number to even staff
5 the committees that are necessary in a working body, and in
6 order to assure adequate representation to our rural areas, I
7 support Mags and not Mr. Etchart.

8 CHAIRMAN GRAYBILL: Mr. Jacobsen.

9 DELEGATE JACOBSEN: Mr. President and fellow dele-
10 gates. We already, in our Constitutional Convention, dis-
11 tricted it to twenty-three districts. Why not forty-six
12 senators and ninety-two legislators without leaving it to a
13 new legislature to decide what size it's going to be? Set
14 it at forty-six and ninety-two. It would be a little less
15 than what we're talking about and a little more in some
16 respects than what we're talking about. Thank you.

17 CHAIRMAN GRAYBILL: Mr. Gysler.

18 DELEGATE GYSLER: Mr. Chairman. I'm going to sup-
19 port Mr. Etchart's amendment now and then, if that fails,
20 support Mr. Aasheim. I think there is one thing that all of
21 us from the rural areas should recognize and think about. As
22 Mr. Davis has said, regardless of what happens numbers wise,
23 the towns in this state can control it. I had hoped that by
24 the time we got the convention this far, that some things
25 would have happened that haven't as yet happened, but I am

1 sure that at a meeting coming up pretty soon, all of the farm
2 groups organizations in the state of Montana, for the first
3 time, are going to start getting together on some things. One
4 of these things is what the rural people, the agricultural
5 people, of the state of Montana should have been doing for a
6 long time, and that is letting the people in the cities and
7 in the urban areas know that there are a lot of farm dollars
8 being circulated in this state. I feel that when this is
9 worked out with the farm groups and when this kind of a pro-
10 motion starts, for the first time in many a year, we in the
11 rural areas, aren't going to have to worry about being outvoted
12 by the people in the cities. When the people in the cities
13 can walk down their streets on a Saturday or any day of the
14 week and find out how many rural people they have in their
15 town, they're going to recognize where an awful lot of the
16 economy of the state of Montana comes from. I'm certainly
17 not worried about going to the bottom of forty and eighty
18 and the maximum of fifty and a hundred as we have right now.
19 I think we should keep fifty and a hundred, because this is
20 what it is. Unless the people in the rural areas get together
21 and do things like I hope the farm organizations will start
22 on next week or the week after when they have their meetings,
23 we're dead sunk no matter how many members we have in there.
24 I support the Etchart amendment to start with.

25 CHAIRMAN GRAYBILL: Very well. Members of the body,

1 you have before you Mr. Etchart's amendment to lower the sen-
 2 ate minimum to forty and the house minimum to eighty. That's
 3 from forty-five and from ninety. We want a roll call vote.
 4 So many as shall be in favor of Mr. Etchart's amendment, please
 5 vote Aye on the voting machines. So many as are opposed,
 6 please vote No. Have all the delegates voted? Any delegate
 7 want to change his vote? Please take the vote.

8	Aasheim	- Aye	Brown	- Aye
9	Anderson, J.	- Nay	Bugbee	- Aye
10	Anderson, O.	- Nay	Burkhardt	- Aye
11	Arbanas	- Abs	Cain	- Aye
12	Arness	- Nay	Campbell	- Aye
13	Aronow	- Nay	Cate	- Aye
14	Artz	- Aye	Champoux	- Abs
15	Ask	- Nay	Choate	- Aye
16	Babcock	- Aye	Conover	- Nay
17	Barnard	- Nay	Cross	- Nay
18	Bates	- Nay	Dahood	- Aye
19	Belcher	- Abs	Davis	- Nay
20	Berg	- Aye	Delaney	- Nay
21	Berthelson	- Nay	Driscoll	- Abs
22	Blaylock	- Nay	Drum	- Aye
23	Blend	- Nay	Eck	- Aye
24	Bowman	- Aye	Erdmann	- Aye
25	Brazier	- Aye	Eskildsen	- Abs

1	Etchart	- Aye	Mahoney	- Aye
2	Felt	- Aye	Mansfield	- Aye
3	Foster	- Nay	Martin	- Nay
4	Furlong	- Aye	McCarvel	- Nay
5	Garlington	- Aye	McDonough	- Nay
6	Graybill	- Aye	McKeon	- Aye
7	Gysler	- Aye	McNeil	- Aye
8	Habedank	- Aye	Melvin	- Aye
9	Hanson, R. S.	- Nay	Monroe	- Nay
10	Hanson, R.	- Nay	Murray	- Aye
11	Harbaugh	- Aye	Noble	- Aye
12	Harlow	- Aye	Nutting	- Abs
13	Harper	- Aye	Payne	- Nay
14	Harrington	- Aye	Pemberton	- Aye
15	Heliker	- Aye	Rebal	- Aye
16	Holland	- Abs	Reichert	- Nay
17	Jacobsen	- Aye	Robinson	- Nay
18	James	- Aye	Roeder	- Nay
19	Johnson	- Aye	Rollins	- Aye
20	Joyce	- Nay	Romney	- Nay
21	Kamhoot	- Nay	Rygg	- Aye
22	Kelleher	- Abs	Scanlin	- Aye
23	Leuthold	- Aye	Schiltz	- Aye
24	Loendorf	- Aye	Siderius	- Aye
25	Lorello	- Aye	Simon	- Aye

1	Skari	- Aye	Van Buskirk	- Aye
2	Sparks	- Aye	Vermillion	- Nay
3	Speer	- Nay	Wagner	- Aye
4	Studer	- Aye	Ward	- Aye
5	Sullivan	- Aye	Warden	- Aye
6	Swanberg	- Aye	Wilson	- Aye
7	Toole	- Aye	Woodmansey	- Aye

8 CLERK HANSON: Mr. Chairman. Sixty-two Delegates
9 voting Aye, thirty voting No.

10 CHAIRMAN GRAYBILL: Sixty-two having voted Aye,
11 and thirty having voted No, Mr. Etchart's motion prevails.
12 The minimum in Mr. Aasheim's amendment is forty on the senate
13 and eighty on the house. Is there further discussion on Mr.
14 Aasheim's motion?

15 Mr. Schiltz.

16 DELEGATE SCHILTZ: I would point out that somewhere
17 in this legislative article, it provides that a senatorial
18 district be made up of two representative districts. I don't
19 know if you can make that work out, if you have anything but
20 two to one provided for.

21 CHAIRMAN GRAYBILL: The Chair would observe that
22 the minimums at least, would allow two to one. The issue is
23 on Mr. Aasheim's motion. His motion is to change, in section
24 two of the bicameral -- page seven, the bicameral section --
25 the maximum in the senate is to be fifty, and as amended, the

1 minimum is to be forty. The maximum in the house is to be one
2 hundred and the minimum in the house is to be eighty. Do
3 you want a roll call? Very well. You want a roll call. So
4 many as shall be in favor of Mr. Aasheim's amendment, vote
5 Aye, and so many as shall be opposed, vote No. Have all the
6 delegates voted?

7 Mrs. Pemberton.

8 DELEGATE PEMBERTON: Mr. President. There is some
9 question in this area of the hall the exact way we're supposed
10 to be looking at this.

11 CHAIRMAN GRAYBILL: I'm sorry. The vote is on and
12 I've explained that you're voting on Mr. Aasheim's amendment
13 which is to change the bicameral size of the legislature so
14 that the senate is forty and fifty and the house is eighty
15 and a hundred. That's his amendment. It changes it from the
16 fifty-three and fifty and from the hundred and six and a
17 hundred. The vote is still open. Does any delegate wish to
18 change his vote? Mr. Romney, for what purpose do you rise?

19 DELEGATE ROMNEY: Would you please state that
20 again, the numbers?

21 CHAIRMAN GRAYBILL: Mr. Aasheim's amendment now
22 reads that the maximum in the senate shall be fifty and the
23 minimum shall be forty. In the house, the maximum would be
24 a hundred and the minimum would be eighty. You're aware that
25 Mr. Etchart amended the bottom limits of Mr. Aasheim's motion.

1 Have all the delegates voted? Any delegate wish to change
2 his vote? Anyone doesn't understand yet? Very well. We'll
3 close the vote.

4	Aasheim	-	Aye	Campbell	-	Aye
5	Anderson, J.	-	Nay	Cate	-	Aye
6	Anderson, O.	-	Aye	Champoux	-	Abs
7	Arbanas	-	Abs	Choate	-	Aye
8	Arness	-	Nay	Conover	-	Aye
9	Aronow	-	Nay	Cross	-	Aye
10	Artz	-	Aye	Dahood	-	Aye
11	Ask	-	Nay	Davis	-	Nay
12	Babcock	-	Aye	Delaney	-	Nay
13	Barnard	-	Nay	Driscoll	-	Nay
14	Bates	-	Aye	Drum	-	Aye
15	Belcher	-	Abs	Eck	-	Aye
16	Berg	-	Aye	Erdmann	-	Aye
17	Berthelson	-	Aye	Eskildsen	-	Abs
18	Blaylock	-	Aye	Etchart	-	Aye
19	Blend	-	Aye	Felt	-	Aye
20	Bowman	-	Aye	Foster	-	Nay
21	Brazier	-	Aye	Furlong	-	Aye
22	Brown	-	Aye	Garlington	-	Aye
23	Bugbee	-	Aye	Graybill	-	Aye
24	Burkhardt	-	Aye	Gysler	-	Aye
25	Cain	-	Aye	Habedank	-	Aye

1	Hanson, R. S.	-	Nay	Monroe	-	Nay
2	Hanson, R.	-	Nay	Murray	-	Aye
3	Harbaugh	-	Aye	Noble	-	Aye
4	Harlow	-	Aye	Nutting	-	Abs
5	Harper	-	Aye	Payne	-	Aye
6	Harrington	-	Aye	Pemberton	-	Aye
7	Heliker	-	Aye	Rebal	-	Aye
8	Holland	-	Abs	Reichert	-	Aye
9	Jacobsen	-	Aye	Robinson	-	Nay
10	James	-	Aye	Roeder	-	Aye
11	Johnson	-	Aye	Rollins	-	Aye
12	Joyce	-	Nay	Romney	-	Aye
13	Kamhoot	-	Aye	Rygg	-	Aye
14	Kelleher	-	Abs	Scanlin	-	Aye
15	Leuthold	-	Aye	Schiltz	-	Aye
16	Loendorf	-	Aye	Siderius	-	Aye
17	Lorello	-	Aye	Simon	-	Aye
18	Mahoney	-	Aye	Skari	-	Aye
19	Mansfield	-	Aye	Sparks	-	Aye
20	Martin	-	Nay	Speer	-	Aye
21	McCarvel	-	Aye	Studer	-	Aye
22	McDonough	-	Nay	Sullivan	-	Aye
23	McKeon	-	Aye	Swanberg	-	Aye
24	McNeil	-	Aye	Toole	-	Aye
25	Melvin	-	Aye	Van Buskirk	-	Aye

1 Vermillion - Nay Warden - Aye
2 Wagner - Aye Wilson - Aye
3 Ward - Aye Woodmansey - Aye

4 CLERK HANSON: Mr. Chairman, seventy-seven Delegates
5 voting Aye, sixteen voting No.

6 CHAIRMAN GRAYBILL: Seventy-seven voting Aye, six-
7 teen voting No, Mr. Aasheim's amendment prevails. Is there
8 anything else about the numbers?

9 Mr. Martin.

10 DELEGATE MARTIN: Mr. Chairman, I'd like to explain
11 my vote. Not only my vote but --

12 CHAIRMAN GRAYBILL: Now, wait a minute. I'm sorry,
13 but you have to explain your vote while the vote is being
14 taken. There was lots of time. If you voted wrong and would
15 like to journal to show so, you may certainly do so.

16 DELEGATE MARTIN: I don't want to do that. I
17 thought you said we could explain our vote.

18 CHAIRMAN GRAYBILL: You may explain your vote, un-
19 der the rules, until I close the ballot. There was lots of
20 time and you certainly may put on the journal something if
21 you want to, but the vote is already cast. If you want the
22 journal to show something, go ahead and state it.

23 DELEGATE MARTIN: My reason for voting No is for
24 the reason that I'm going to continue and be consistent in
25 voting No. Once we decide something, it seems we should be

1 able to stand up for it.

2 CHAIRMAN GRAYBILL: All right. Mr. Aasheim, do you
3 want to move that section two of the legislative bicameral
4 article be adopted?

5 DELEGATE AASHEIM: Mr. Chairman. I move to adopt
6 section two of the bicameral article on page seven, as amend-
7 ed.

8 CHAIRMAN GRAYBILL: I think you mean to say that
9 when this committee does arise and report after having had
10 under consideration section two of the bicameral article, that
11 this committee report to the convention that it be adopted.
12 Is that what you say?

13 DELEGATE AASHEIM: That's what I say, yes.

14 CHAIRMAN GRAYBILL: All in favor, say Aye.

15 DELEGATES: Aye.

16 CHAIRMAN GRAYBILL: Opposed, No.

17 DELEGATES: No.

18 CHAIRMAN GRAYBILL: The Ayes have it and it's
19 adopted, as amended. Now, the Chair sees that the hour is
20 late and rather than go on with your's, Mr. Harper, I'm going
21 to recess. Before we recess, Mr. Murray, unless someone
22 objects, the Chair would like to make two announcements or
23 three announcements. First of all, some of you might want to
24 arrange during the lunch hour or call your wives -- The
25 wives are having a luncheon tomorrow and reservations are

1 necessary. Mrs. Garlington has arranged to have a speaker
2 discussing interesting and old houses in Helena. It looks like
3 a good program so if your wife is not attending yet, and you
4 want to check on it, will you please check and make these
5 arrangements by this afternoon with the office out there?
6 Secondly, the Chair wishes to advise you that we're having a
7 delegates' dinner tomorrow at the Colonial Club. You're
8 allowed to bring guests. We do not yet have enough reservations.
9 Please make your reservations. This is another five dollar,
10 including two drinks, dinner just like the other one, so please
11 get your names in to the people in the glass cage. Now, Mr.
12 Murray, have you an announcement?

13 DELEGATE MURRAY: I move the Committee recess until
14 the hour of 1:50 o'clock P.M. this day.

15 CHAIRMAN GRAYBILL: The motion is to recess until
16 1:50 o'clock P.M. this day. All in favor, say Aye.

17 DELEGATES: Aye.

18 CHAIRMAN GRAYBILL: Opposed, No.

19 (No response)

20 CHAIRMAN GRAYBILL: So ordered.

21 (Recess 12:38 o'clock P.M.)

22

23

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25

1 MONTANA CONSTITUTIONAL CONVENTION

2 THIRTY-NINTH DAY

3 Tuesday, March 7, 1972

Convention Hall

4 1:57 o'clock, P.M.

Helena, Montana

5
6 CHAIRMAN GRAYBILL: The Committee will be in session.
7 The Committee will be in session. Mr. Arbanas, for what pur-
8 pose do you arise?

9 DELEGATE ARBANAS: Mr. President, I'd like to be
10 counted as present.

11 CHAIRMAN GRAYBILL: Very well, you're present and
12 voting and let's see, Mr. -- somebody else that was absent this
13 morning wants to be present. Oh, Mr. Champoux. He isn't pre-
14 sent but he is. Is he here? Mr. Champoux, do you want to be
15 counted as present this afternoon?

16 DELEGATE CHAMPOUX: Yes, sir.

17 CHAIRMAN GRAYBILL: Very well. Members of the com-
18 mittee, before the recess -- members of the committee, before
19 the recess we had completed section two of the legislative bi-
20 cameral article. The rules were suspended to allow for recon-
21 sideration of section two of the unicameral article, which
22 appears on page ten of the Style and Drafting legislative pro-
23 posal. The Chair will recognize Mrs. Reichert.

24 DELEGATE REICHERT: Mr. Chairman, I move to recon-
25 sider section two of the legislative unicameral article for

1 the purpose of adjusting the size.

2 CHAIRMAN GRAYBILL: Mrs. Reichert, did you vote on
3 the prevailing side?

4 DELEGATE REICHERT: Yes, I did.

5 CHAIRMAN GRAYBILL: All right. Mrs. Reichert, do
6 you want to explain -- now, this is -- we are going to vote on
7 reconsideration. Do you want to explain briefly your purpose.

8 DELEGATE REICHERT: Very briefly. For the same rea-
9 sons that the bicameral was reconsidered, I think we need some
10 flexibility. I think the figures, one hundred to one hundred
11 and five, as they now exist, do not lend the kind of flexibil-
12 ity we would like in this article. Thank you, Mr. Chairman.

13 CHAIRMAN GRAYBILL: Is there discussion of the mo-
14 tion to reconsider?

15 (No response)

16 CHAIRMAN GRAYBILL: If not, all in favor of the motion
17 to reconsider, please say Aye.

18 DELEGATES: Aye.

19 CHAIRMAN GRAYBILL: Opposed, No.

20 DELEGATES: No.

21 CHAIRMAN GRAYBILL: The Ayes have it and so ordered.
22 Mrs. Reichert.

23 DELEGATE REICHERT: Mr. Chairman, I move to amend
24 section two, page ten, line fourteen, of the legislative uni-
25 cameral article by striking the following figure, one hundred,

1 and inserting in lieu thereof the following: ninety.

2 Mr. Chairman.

3 CHAIRMAN GRAYBILL: Is that the only one?

4 DELEGATE REICHERT: Yes, sir.

5 CHAIRMAN GRAYBILL: Very well, Mrs. Reichert.

6 DELEGATE REICHERT: We feel that by substituting the
7 figure, ninety, for a hundred and retaining the maximum figure
8 of one hundred and five, we will have attained the type of
9 flexibility we would like in our legislative article.

10 CHAIRMAN GRAYBILL: Very well, the sense of Mrs.
11 Reichert's amendment is to change on line fourteen in section
12 two of the legislative unicameral article on page ten of your
13 booklets the number one hundred to ninety, so that the spread
14 on the unicameral body would be ninety to a hundred and five
15 instead of a hundred to a hundred and five. Is there discus-
16 sion?

17 Mr. Hanson.

18 DELEGATE ROD HANSON: Mr. President, I move to amend
19 Mrs. Reichert's motion to change the number one hundred and
20 five on line fourteen, page ten, to one hundred.

21 CHAIRMAN GRAYBILL: Mr. Hanson has moved to change
22 the number, one-oh-five, on line fourteen, to one hundred so
23 the spread, if both of these amendments was adopted, would be
24 from ninety to a hundred instead of from a hundred to a hundred
25 and five.

1 Mrs. Reichert.

2 DELEGATE REICHERT: Mr. Chairman, I resist the amend-
3 ment by Mr. Hanson. I have spoken to several of my fellow
4 Delegates, particularly Mr. Foster, and one hundred and five
5 seems a more realistic figure for the maximum limit on a uni-
6 cameral body.

7 CHAIRMAN GRAYBILL: Is there other discussion. I
8 want to let them discuss it, Mr. Hanson, before you close.

9 Mr. Romney.

10 DELEGATE ROMNEY: I concur with the lady from Cas-
11 cade. Hundred and five is a magic number that we should have
12 had in the other one, and so I think we should retain the one
13 hundred and five so that all the bicameralists that wanted to
14 have a large and adequate number of representatives can swing
15 over to the unicameralists' position in the way in which it
16 was divined they would. May I ask the lady from Cascade a
17 question?

18 CHAIRMAN GRAYBILL: Mrs. Reichert, will you yield?

19 DELEGATE REICHERT: Yes, Mr. Chairman.

20 DELEGATE ROMNEY: Mrs. Reichert, would you advise
21 me who is going to make the decision as to how many it will be?

22 DELEGATE REICHERT: Well, I think that when district-
23 ing is taken care of, I think that -- I think, realistically,
24 we are going to look at maximum limits in both the unicameral
25 and bicameral for the next few years. I think that, realistic-

1 ally, we are going to have a bicameral of a hundred and fifty
2 for the next few years or a unicameral of a hundred and five.
3 I think that for the future we need the lower limit of the bi-
4 cameral, which is a hundred and twenty, if we ever do need it,
5 and the lower limit of the unicameral as ninety.

6 CHAIRMAN GRAYBILL: Mr. Romney, I don't know if that
7 is responsive to your question but the section says the number
8 of senators shall be prescribed by law, so the legislature is
9 going to set it. Is there other discussion?

10 Mr. Skari.

11 DELEGATE SKARI: Mr. President, would Mr. Hanson
12 yield to a question?

13 CHAIRMAN GRAYBILL: Mr. Hanson, will you yield?

14 DELEGATE ROD HANSON: I yield.

15 DELEGATE SKARI: Rod, I notice that on the bicameral
16 we have the range set from eighty to one hundred. Is there
17 any special reason why you tighten up this range of flexibil-
18 ity on the unicameral from ninety to one hundred? It does
19 seem to compress it here.

20 DELEGATE ROD HANSON: Carmen, I merely did it to con-
21 form to the same size the house would be in a unicameral body.
22 However, if -- I see the consensus and I would withdraw my
23 motion to amend.

24 CHAIRMAN GRAYBILL: Mr. Hanson, do you want to with-
25 draw yours?

1 DELEGATE ROD HANSON: Yes, I withdraw it.

2 CHAIRMAN GRAYBILL: Mr. Hanson has withdrawn his mo-
3 tion. Is there any further discussion on Mrs. Reichert's mo-
4 tion to lower the number, one hundred, to ninety so that the
5 range is ninety to a hundred and five?

6 DELEGATE AASHEIM: Mr. Chairman.

7 CHAIRMAN GRAYBILL: Mr. Aasheim.

8 DELEGATE AASHEIM: Are we on Mr. Hanson's amendment
9 now?

10 CHAIRMAN GRAYBILL: He just withdrew his.

11 DELEGATE AASHEIM: Oh, I'm sorry.

12 CHAIRMAN GRAYBILL: So, we're on Mrs. Reichert's
13 which is moving the number, one hundred, down to ninety, the
14 bottom.

15 DELEGATE AASHEIM: But, I think there's some clarifi-
16 cation that's necessary here. There's a feeling by some people
17 that the commission sets the size of the legislature. This is
18 not true. The legislature still determines the size. I'm
19 sorry that Mr. Hanson withdrew his because I -- no, that's
20 fine, because I'm sure that the unicameral people -- the uni-
21 cameral people need five more to correct the errors the hundred
22 make.

23 (Laughter)

24 CHAIRMAN GRAYBILL: Mr. Aasheim, perhaps I should re-
25 cap this for you, but Mrs. Reichert has made an amendment to

1 change the minimum from a hundred to ninety. Mr. Hanson made
2 a motion but it has been withdrawn, and Mr. Romney asked who
3 would set it and we agreed the legislature would. Is there
4 further discussion?

5 Mr. Romney.

6 DELEGATE ROMNEY: I didn't agree the legislature
7 would. I think the commission will.

8 CHAIRMAN GRAYBILL: Under this -- I see, under this
9 section you think the commission will.

10 DELEGATE ROMNEY: Yes.

11 CHAIRMAN GRAYBILL: Well, it looks -- the Chair
12 would observe that the commission's got to have the power to
13 legislate, then, because it says as provided by law. Very
14 well, do you want a roll call vote?

15 DELEGATES: No.

16 CHAIRMAN GRAYBILL: Mrs. Reichert says yes. All
17 those in favor of Mrs. Reichert's motion to lower the number
18 one hundred to ninety on line fourteen of section two of the
19 unicameral article, please indicate so by voting Aye, and those
20 that want to leave it -- those that do not want to, vote No.
21 Have all the Delegates voted?

22 (No response)

23 CHAIRMAN GRAYBILL: Does any Delegate wish to change
24 his vote?

25 (No response)

1	CHAIRMAN GRAYBILL: Please cast the ballot.					
2	Aasheim	-	Aye	Champoux	-	Aye
3	Anderson, J.	-	Aye	Choate	-	Absent
4	Anderson, O.	-	Aye	Conover	-	Aye
5	Arbanas	-	Aye	Cross	-	Aye
6	Arness	-	Absent	Dahood	-	Aye
7	Aronow	-	Nay	Davis	-	Absent
8	Artz	-	Aye	Delaney	-	Absent
9	Ask	-	Nay	Driscoll	-	Nay
10	Babcock	-	Absent	Drum	-	Absent
11	Barnard	-	Nay	Eck	-	Aye
12	Bates	-	Absent	Ercmann	-	Aye
13	Belcher	-	Absent	Eskildsen	-	Excused
14	Berg	-	Aye	Etchart	-	Aye
15	Berthelson	-	Aye	Felt	-	Absent
16	Blaylock	-	Aye	Foster	-	Aye
17	Blend	-	Aye	Furlong	-	Aye
18	Bowman	-	Aye	Garlington	-	Aye
19	Brazier	-	Aye	Gysler	-	Aye
20	Brown	-	Aye	Habedank	-	Aye
21	Bugbee	-	Aye	Hanson, R. S.	-	Aye
22	Burkhardt	-	Absent	Hanson, R.	-	Aye
23	Cain	-	Aye	Harbaugh	-	Aye
24	Campbell	-	Aye	Harlow	-	Aye
25	Cate	-	Aye	Harper	-	Aye

1	Harrington	-	Aye	Pemberton	-	Aye
2	Heliker	-	Aye	Rebal	-	Aye
3	Holland	-	Aye	Reichert	-	Aye
4	Jacobsen	-	Aye	Robinson	-	Aye
5	James	-	Aye	Roeder	-	Absent
6	Johnson	-	Aye	Rollins	-	Aye
7	Joyce	-	Nay	Romney	-	Nay
8	Kamhoot	-	Nay	Rygg	-	Aye
9	Kelleher	-	Aye	Scanlin	-	Aye
10	Leuthold	-	Aye	Schiltz	-	Aye
11	Loendorf	-	Absent	Siderius	-	Aye
12	Lorello	-	Aye	Simon	-	Aye
13	Mahoney	-	Aye	Skari	-	Aye
14	Mansfield	-	Aye	Sparks	-	Aye
15	Martin	-	Nay	Speer	-	Aye
16	McCarvel	-	Aye	Studer	-	Aye
17	McDonough	-	Aye	Sullivan	-	Aye
18	McKeon	-	Aye	Swanberg	-	Aye
19	McNeil	-	Aye	Toole	-	Aye
20	Melvin	-	Aye	Van Buskirk	-	Aye
21	Monroe	-	Aye	Vermillion	-	Aye
22	Murray	-	Aye	Wagner	-	Aye
23	Noble	-	Aye	Ward	-	Absent
24	Nutting	-	Excused	Warden	-	Aye
25	Payne	-	Aye	Wilson	-	Nay

1 Woodmansey - Aye Mr. Chairman - Aye

2 CLERK SMITH: Mr. Chairman, seventy-six voting Aye,
3 nine voting No.

4 CHAIRMAN GRAYBILL: Seventy-six having voted Aye,
5 and nine No, Mrs. Reichert's motion carries and the number in
6 the unicameral article is now reduced to ninety -- ninety to
7 a hundred and five.

8 Mr. Schiltz.

9 DELEGATE SCHILTZ: Having voted on the prevailing
10 side this morning when we considered section fourteen of the
11 unicameral article, I move to add after the word, senators, on
12 page four of page fifteen --

13 CHAIRMAN GRAYBILL: Mr. Schiltz, the Chair will let
14 you do that next. Will you move that when this committee does
15 arise and report, after having had under consideration section
16 two of the unicameral article five under legislature, that it
17 recommend to the Convention that the same be adopted as amend-
18 ed?

19 DELEGATE SCHILTZ: In the interests of saving my
20 voice, I so move.

21 CHAIRMAN GRAYBILL: All right. All in favor, say
22 Aye.

23 DELEGATES: Aye.

24 CHAIRMAN GRAYBILL: Opposed, No.

25 DELEGATES: (No audible response)

1 CHAIRMAN GRAYBILL: Now, section two is closed up
2 again. All right, now you want to look at fourteen?

3 DELEGATE SCHILTZ: Fourteen on page fifteen and of
4 course it will be changed back on page three or wherever it is.
5 On line four after the word, senators, which of course will be
6 changed to members, the words -- add the words, and each dis-
7 trict shall elect one member. Mrs. Bates pointed this out to
8 me and of course we only worked with what we had to work with
9 and that's what that committee sent us, and in section fourteen
10 in the bicameral, or at least in the corresponding section of
11 the bicameral, that language is used -- and each district shall
12 elect one member -- and I think it probably should be in here
13 because it needs it and because it needs to be parallel.

14 CHAIRMAN GRAYBILL: And it does not amount to a sub-
15 stantive change because we did adopt the single member district
16 proposal, is that the idea?

17 DELEGATE SCHILTZ: That's right.

18 CHAIRMAN GRAYBILL: All right, now, the Chair under-
19 stands that Mr. Schiltz is moving to reconsider section four-
20 teen in the unicameral, and he has stated his reasons in his
21 discussion. All in favor of reconsidering section fourteen,
22 say Aye.

23 DELEGATES: Aye.

24 CHAIRMAN GRAYBILL: Opposed?

25 DELEGATES: (No audible response)

1 CHAIRMAN GRAYBILL: It's adopted. Now, Mr. Schiltz,
2 before you make your amendment, this morning I think you left
3 out section fourteen. Does it have to be changed from senators
4 to members? I don't care. Make your motion.

5 DELEGATE SCHILTZ: Well, I'll make a motion before
6 we finish with this report that will take care of that, too.

7 CHAIRMAN GRAYBILL: All right.

8 DELEGATE SCHILTZ: Mr. Chairman, I move to amend sec-
9 tion fourteen of the unicameral section, as it appears on page
10 fifteen, line four, by adding after the word, senators, and
11 each district shall elect one member.

12 CHAIRMAN GRAYBILL: Very well, Mr. Schiltz wishes to
13 amend on page fifteen at line four after the word, senators, by
14 adding: and each district shall elect one member--so that the
15 single member district principle is involved in this section
16 and he tells us that it is also presently involved in the bi-
17 cameral section. Is there any discussion?

18 (No response)

19 CHAIRMAN GRAYBILL: All in favor of the motion, say
20 Aye.

21 DELEGATES: Aye.

22 CHAIRMAN GRAYBILL: Opposed, No.

23 DELEGATES: (No audible response)

24 CHAIRMAN GRAYBILL: It's adopted.

25 DELEGATE SCHILTZ: Mr. Chairman.

1 CHAIRMAN GRAYBILL: Yes, sir.

2 DELEGATE SCHILTZ: I move that when this committee
3 does arise and report, after having had under consideration
4 section fourteen of the unicameral judicial -- or legislative
5 article as reported in Report Number Three of the Style and
6 Drafting Committee, that it recommend the same do be adopted as
7 amended.

8 CHAIRMAN GRAYBILL: You have all heard the motion
9 that section fourteen, which we have just reconsidered and
10 amended, be adopted as amended. All in favor, say Aye.

11 DELEGATES: Aye.

12 CHAIRMAN GRAYBILL: Opposed, No.

13 DELEGATES: (No audible response)

14 CHAIRMAN GRAYBILL: It's adopted as amended.

15 DELEGATE SCHILTZ: Mr. Chairman.

16 CHAIRMAN GRAYBILL: Mr. Schiltz.

17 DELEGATE SCHILTZ: Have we moved section two in the
18 bicameral?

19 CHAIRMAN GRAYBILL: We have.

20 DELEGATE SCHILTZ: Since it's been changed?

21 CHAIRMAN GRAYBILL: As amended, we moved it, yes.

22 DELEGATE SCHILTZ: All right, we're ready to go to
23 section three then.

24 CHAIRMAN GRAYBILL: All right, if you'll all turn to
25 page seven, after the sheet in the back of the book, on the

1 bicameral proposal, we are now ready to proceed with section
2 three.

3 Mr. Schiltz.

4 DELEGATE SCHILTZ: Mr. Chairman, I move that when
5 this committee does arise and report, after having had under
6 consideration section three of the bicameral section of Style
7 and Drafting Report Number Three, it recommend the same be
8 adopted.

9 Mr. Chairman.

10 CHAIRMAN GRAYBILL: Mr. Schiltz.

11 DELEGATE SCHILTZ: These are style changes only and
12 they pertain only to the unicameral -- or, the bicameral sec-
13 tion.

14 CHAIRMAN GRAYBILL: Is there any discussion or debate
15 of section three?

16 (No response)

17 CHAIRMAN GRAYBILL: So many as shall be in favor of
18 adopting section three, please say Aye.

19 DELEGATES: Aye.

20 CHAIRMAN GRAYBILL: Opposed, No.

21 DELEGATES: (No audible response)

22 CHAIRMAN GRAYBILL: It is adopted. Section four.

23 DELEGATE SCHILTZ: Mr. Chairman, I move that when
24 this committee does arise and report, after having had under
25 consideration section four of the bicameral portion of Style

1 and Drafting Report Number Three, it recommend the same be
2 adopted.

3 Mr. Chairman.

4 CHAIRMAN GRAYBILL: Mr. Schiltz.

5 DELEGATE SCHILTZ: This was approved in the same
6 form this morning in the unicameral section, so all the style
7 changes noted then are in here now.

8 CHAIRMAN GRAYBILL: Is there any discussion?

9 (No response)

10 CHAIRMAN GRAYBILL: All in favor of section four,
11 say Aye.

12 DELEGATES: Aye.

13 CHAIRMAN GRAYBILL: It's adopted. Mr. Schiltz,
14 section five.

15 DELEGATE SCHILTZ: Before I get into that, I want to
16 ask Mr. Harlow if he's working on section thirteen. Are you?

17 DELEGATE HARLOW: Yes.

18 DELEGATE SCHILTZ: O.K. I move that when this com-
19 mittee does arise and report, after having had under consider-
20 ation section five, sub one, of the Style and Drafting Report
21 Number Three, bicameral section, that it recommend the same
22 do pass. Mr. Chairman, again, this was approved in the uni-
23 cameral portion this morning and it is the same.

24 CHAIRMAN GRAYBILL: Is there any discussion of sec-
25 tion five, sub one?

1 (No response)

2 CHAIRMAN GRAYBILL: All in favor of section five, sub
3 one, say Aye.

4 DELEGATES: Aye.

5 CHAIRMAN GRAYBILL: Opposed?

6 DELEGATES: (No audible response)

7 CHAIRMAN GRAYBILL: It's adopted. Sub two.

8 DELEGATE SCHILTZ: I move that when this committee
9 does arise and report, after having had under consideration
10 section five, sub two, bicameral portion of Style and Drafting
11 Report Number Three, that it recommend the same be adopted.
12 Mr. Chairman, again, this was adopted this morning in the same
13 form.

14 CHAIRMAN GRAYBILL: Any discussion?

15 (No response)

16 CHAIRMAN GRAYBILL: All in favor of five, sub two,
17 say Aye.

18 DELEGATES: Aye.

19 CHAIRMAN GRAYBILL: Opposed?

20 DELEGATES: (No audible response)

21 CHAIRMAN GRAYBILL: It's adopted. Section six.

22 DELEGATE SCHILTZ: Mr. Chairman, I move that when
23 this committee does arise and report, after having had under
24 consideration section six of the bicameral portion of Style
25 and Drafting Report Number Three, that it recommend the same

1 be adopted.

2 Mr. Chairman.

3 CHAIRMAN GRAYBILL: Mr. Schiltz.

4 DELEGATE SCHILTZ: Once again, this was O.K.'d this
5 morning in the same form in the unicameral section.

6 CHAIRMAN GRAYBILL: Any discussion?

7 (No response)

8 CHAIRMAN GRAYBILL: As many as shall be in favor of
9 section six, say Aye.

10 DELEGATES: Aye.

11 CHAIRMAN GRAYBILL: Opposed?

12 DELEGATES: (No audible response)

13 CHAIRMAN GRAYBILL: It's adopted. Section seven.

14 DELEGATE SCHILTZ: Mr. Chairman, I move that when
15 this committee does arise and report, after having had under
16 consideration section seven of the bicameral portion of Style
17 and Drafting Report Number Three, it recommend the same be
18 adopted.

19 Mr. Chairman.

20 CHAIRMAN GRAYBILL: Mr. Schiltz.

21 DELEGATE SCHILTZ: There were no changes in this this
22 morning and it's the same as the one we adopted for the uni-
23 cameral section.

24 CHAIRMAN GRAYBILL: All those in favor of section
25 seven, say Aye.

1 DELEGATES: Aye.
2 CHAIRMAN GRAYBILL: Opposed?
3 DELEGATES: (No audible response)
4 CHAIRMAN GRAYBILL: It's adopted. Section eight.
5 DELEGATE SCHILTZ: Mr. Chairman, I move that when this
6 committee does arise and report, after having had under consid-
7 eration section eight of the bicameral section of Style and
8 Drafting Report Number Three, it recommend the same be adopted.
9 Mr. Chairman, this is, again, the same as the one we adopted
10 this morning for the unicameral section.
11 CHAIRMAN GRAYBILL: Is there discussion?
12 (No response)
13 CHAIRMAN GRAYBILL: All in favor of section eight,
14 say Aye.
15 DELEGATES: Aye.
16 CHAIRMAN GRAYBILL: Opposed?
17 DELEGATES: (No audible response)
18 CHAIRMAN GRAYBILL: Section eight is adopted. Sec-
19 tion nine.
20 DELEGATE SCHILTZ: Mr. Chairman, I move that the
21 language in section nine be deleted and in lieu thereof the
22 struck-out language be reinstated.
23 CHAIRMAN GRAYBILL: And in this case we can leave in
24 the word senator or representative, can we?
25 DELEGATE SCHILTZ: Yes.

1 CHAIRMAN GRAYBILL: And a member of either house,
2 we can leave that in?

3 DELEGATE SCHILTZ: That's right.

4 CHAIRMAN GRAYBILL: The body will recognize this is
5 the one this morning where we agreed to put the stricken lang-
6 uage back in because it was out of the old -- the present Con-
7 stitution. Is there further discussion?

8 Mr. Furlong.

9 DELEGATE FURLONG: Mr. Chairman, is a substitute mo-
10 tion in order?

11 CHAIRMAN GRAYBILL: You certainly can move anything
12 you want on section nine.

13 DELEGATE FURLONG: I move as a substitute motion in
14 section nine, in both the bicameral and unicameral, actually,
15 the --

16 CHAIRMAN GRAYBILL: You can only do it at this time
17 in section nine, bicameral.

18 DELEGATE FURLONG: All right. Thank you. The sub-
19 stitute would be: Section nine, Disqualification: No legis-
20 lator shall, during the time for which he is elected, be ap-
21 pointed to any civil office under the authority of the state
22 of Montana created during such time.

23 Mr. Chairman.

24 CHAIRMAN GRAYBILL: Well, let me get the sense of
25 your amendment. You are going to use the first four stricken

1 lines down through -- is that right?

2 DELEGATE FURLONG: Actually, it's the majority report
3 as it was originally reported to the Convention.

4 CHAIRMAN GRAYBILL: Read it again slowly what you want
5 to -- your amendment to say.

6 DELEGATE FURLONG: It would read: Section nine, Dis-
7 qualification. No legislator shall, during the time for which
8 he is elected, be appointed to any civil office under the auth-
9 ority of the state of Montana created during such time.

10 CHAIRMAN GRAYBILL: No legislator shall -- so we put
11 legislator up there in place of senator or representative --
12 during the term for which he shall have been elected be appoint-
13 ed to any civil office under the state of Montana -- is that
14 what you said?

15 DELEGATE FURLONG: Yes.

16 CHAIRMAN GRAYBILL: And, then, what's the rest of it?

17 DELEGATE FURLONG: Created during such time.

18 CHAIRMAN GRAYBILL: All right, this -- Mr. Furlong
19 has proposed an amendment which limits the disqualification to
20 offices created during the time that the senator or represent-
21 ative or legislator serves in his term. I take it that's the
22 sense of your amendment. Is that right? In other words, the
23 only disqualification it would have would be a senator or a
24 legislator could be disqualified from serving on any -- in any
25 civil office which was created during the time -- during the

1 term for which he was elected.

2 DELEGATE FURLONG: Yes.

3 CHAIRMAN GRAYBILL: But he could serve on other -- he
4 could be appointed to other offices because he is eliminating
5 the rest of the disqualifications.

6 Mr. Furlong.

7 DELEGATE FURLONG: Mr. Chairman, fellow Delegates, I
8 actually rise with hesitation to do this but I realize the dan-
9 gers inherent that you may have power play and fraud and you
10 may sell votes to get appointed, and that does concern me.
11 But, I think the few times that would conceivably happen under
12 the normal course of circumstances, is outweighed by the fact
13 that we are essentially denying a person the right to improve
14 his position. I can envision where a person elected for four
15 years may, for healthful reasons, may decide that he best not
16 serve in the legislature, could still be barred for that period
17 of time from any appointment. It just seems to me that a man
18 or woman inherently has the right to improve their position
19 and I just think that the number of times that fraud might be
20 involved would be far outweighed by the number of times that
21 we would under the present situation actually disbar or dis-
22 qualify an otherwise qualified person who may very well be the
23 person for the job or the position to which he would be appoint-
24 ed. I would certainly like to hear some discussion. I would
25 appreciate your support. Thank you.

1 CHAIRMAN GRAYBILL: Mr. Holland.

2 DELEGATE HOLLAND: Mr. Chairman, I rise to a point of
3 order. There's nothing particularly about Mr. Furlong's motion
4 that I disagree with. I don't have any strong feelings one way
5 or another, but this is a Style and Drafting report and it ap-
6 pears to me that the proposed motion goes to substance and, as
7 such, I ask for a ruling of the Chair as to whether or not Mr.
8 Furlong's motion is in order.

9 CHAIRMAN GRAYBILL: You're quite correct. I think
10 it does go to substance and I think, Mr. Furlong, I have to
11 rule you out of order now that I understand it, unless you want
12 to make a motion to suspend the rules.

13 DELEGATE FURLONG: Mr. Chairman and Mr. Holland,
14 thank you for pointing out the error. I just thought I could
15 slip something in.

16 (Laughter)

17 DELEGATE FURLONG: No, actually, I would move to sus-
18 pend the rules so that we could consider the proposition that
19 I've just put before the body.

20 CHAIRMAN GRAYBILL: All right, you've got to write
21 that down so I've got it up here. Just make a motion to sus-
22 pend the rules for the purpose of amending section nine on dis-
23 qualification, and I guess we'll vote on that in a minute,
24 soon as you get it written up. Is there discussion or debate
25 on the motion to suspend the rules only. Not the issue, just

1 the motion to suspend the rules.

2 Mr. Gysler.

3 DELEGATE GYSLER: Mr. Chairman, I rise to resist the
4 motion to suspend the rules for this proposed amendment to our
5 article.

6 CHAIRMAN GRAYBILL: Mr. McNeil.

7 DELEGATE McNEIL: Mr. Chairman, I likewise resist the
8 motion to suspend the rules. The motion is made to consider
9 precisely what we have already considered in the Committee of
10 the Whole. The majority of this Convention voted to reject the
11 majority committee's report and to adopt the present article
12 five, section seven of our Constitution, which appears in this
13 style and drafting, and for that reason I would oppose the mo-
14 tion to suspend the rules.

15 CHAIRMAN GRAYBILL: Mr. Romney.

16 DELEGATE ROMNEY: I move we have a roll call vote on
17 this. Every time we turn around we're going to suspend the
18 rules. I think we ought to roll call them each time.

19 CHAIRMAN GRAYBILL: Very well, we'll have a roll call.
20 Very well, Mr. Furlong's motion is to suspend the rules for the
21 purpose of voting on the substantive issue of what disqualifi-
22 cations should be allowed under section nine in the bicameral
23 article. Is there further discussion?

24 Mr. Heliker.

25 DELEGATE HELIKER: Mr. Chairman, I rise for a point

1 of information. Would you refresh my recollection of what we
2 did with section nine in the unicameral alternative this morn-
3 ing?

4 CHAIRMAN GRAYBILL: Yes. On section nine this morn-
5 ing, we struck out the Style and Drafting Committee's language
6 and we reinserted the stricken out language which is, in effect,
7 the present Constitution. We also changed in the other article
8 senator or representative to legislator, but that's a minor
9 matter.

10 DELEGATE HELIKER: We did that on the basis that the
11 Style and Drafting report was a substantive change?

12 CHAIRMAN GRAYBILL: No, we did it on the basis that
13 -- well, yes, there was some argument that it was a substantive
14 change but in other words we did not adopt their style change.
15 We went back to the original adopted language of the Convention.

16 DELEGATE HELIKER: It didn't require a suspension of
17 the rules in any case, did it?

18 CHAIRMAN GRAYBILL: No, it was not a substantive
19 change from our original language. The argument was made that
20 the language of the committee was a substantive change but it
21 was not a substantive change from our original action in the
22 Convention.

23 Mrs. Erdmann.

24 DELEGATE ERDMANN: On the same argument we used this
25 morning, I certainly believe we should go back to the original

1 form that we did for the other section, because it seems to me
2 that --

3 CHAIRMAN GRAYBILL: All right, but that isn't the is-
4 sue.

5 DELEGATE ERDMANN: Right now it's for reconsideration.

6 CHAIRMAN GRAYBILL: That's right. In other words, if
7 we reconsider it, then he's going to change it -- move to change
8 the nature of it. All right, a roll call vote has been called
9 for. So many as are in favor of reconsidering section nine in
10 the bicameral article on page nine of Style and Drafting's
11 bicameral report, vote Aye. As many as are opposed, vote No.
12 Well, Mr. Clerk, cancel the ballot, and we'll start over. I
13 pushed the wrong button. All right, now, I'll open the vote
14 again. So many as are in favor, vote Aye, and so many as are
15 opposed, vote No. Have all the Delegates voted?

16 (No response)

17 CHAIRMAN GRAYBILL: Any Delegate wish to change his
18 vote?

19 (No response)

20 CHAIRMAN GRAYBILL: Please take the vote.

21	Aasheim	-	Nay	Aronow	-	Nay
22	Anderson, J.	-	Nay	Artz	-	Nay
23	Anderson, O.	-	Nay	Ask	-	Nay
24	Arbanas	-	Aye	Babcock	-	Aye
25	Arness	-	Nay	Barnard	-	Nay

1	Bates	-	Aye	Eskildsen	-	Excused
2	Belcher	-	Excused	Etchart	-	Nay
3	Berg	-	Nay	Felt	-	Nay
4	Berthelson	-	Nay	Foster	-	Aye
5	Blaylock	-	Nay	Furlong	-	Aye
6	Blend	-	Nay	Garlington	-	Aye
7	Bowman	-	Nay	Gysler	-	Nay
8	Brazier	-	Absent	Habedank	-	Nay
9	Brown	-	Nay	Hanson, R. S.	-	Nay
10	Bugbee	-	Nay	Hanson, R.	-	Nay
11	Burkhardt	-	Absent	Harbaugh	-	Nay
12	Cain	-	Absent	Harlow	-	Nay
13	Campbell	-	Absent	Harper	-	Absent
14	Cate	-	Nay	Harrington	-	Nay
15	Champoux	-	Aye	Heliker	-	Nay
16	Choate	-	Aye	Holland	-	Nay
17	Conover	-	Nay	Jacobsen	-	Aye
18	Cross	-	Aye	James	-	Nay
19	Dahood	-	Aye	Johnson	-	Nay
20	Davis	-	Absent	Joyce	-	Aye
21	Delaney	-	Nay	Kamhoot	-	Nay
22	Driscoll	-	Aye	Kelleher	-	Nay
23	Drum	-	Aye	Leuthold	-	Nay
24	Eck	-	Nay	Loendorf	-	Absent
25	Erdmann	-	Nay	Lorello	-	Nay

1	Mahoney	-	Nay	Rygg	-	Aye
2	Mansfield	-	Nay	Scanlin	-	Nay
3	Martin	-	Nay	Schiltz	-	Nay
4	McCarvel	-	Nay	Siderius	-	Nay
5	McDonough	-	Nay	Simon	-	Nay
6	McKeon	-	Nay	Skari	-	Aye
7	McNeil	-	Nay	Sparks	-	Nay
8	Melvin	-	Nay	Speer	-	Aye
9	Monroe	-	Nay	Studer	-	Aye
10	Murray	-	Absent	Sullivan	-	Aye
11	Noble	-	Nay	Swanberg	-	Aye
12	Nutting	-	Excused	Toole	-	Nay
13	Payne	-	Nay	Van Buskirk	-	Absent
14	Pemberton	-	Nay	Vermillion	-	Nay
15	Rebal	-	Nay	Wagner	-	Nay
16	Reichert	-	Aye	Ward	-	Nay
17	Robinson	-	Aye	Warden	-	Nay
18	Roeder	-	Aye	Wilson	-	Nay
19	Rollins	-	Nay	Woodmansey	-	Nay
20	Romney	-	Nay	Mr. Chairman	-	Nay

21 CLERK SMITH: Mr. Chairman, twenty-three voting Aye,
22 sixty-five voting No.

23 CHAIRMAN GRAYBILL: Sixty-five having voted No, the
24 motion fails to carry and section nine is not reopened for sub-
25 stance, and your motion is then out of order, Mr. Furlong, and

1 Mr. Schiltz, your motion -- did you make your motion to use the
2 original language?

3 DELEGATE SCHILTZ: Yes.

4 CHAIRMAN GRAYBILL: All right, Mr. Schiltz's motion
5 is to use the original language on section nine so that it com-
6 ports with what we did this morning. Mrs. Erdmann, that's your
7 point. Is there discussion about that?

8 (No response)

9 CHAIRMAN GRAYBILL: If not, all those in favor of Mr.
10 Schiltz's motion to use the original language say Aye.

11 DELEGATES: Aye.

12 CHAIRMAN GRAYBILL: Opposed, No.

13 DELEGATES: (No audible response)

14 CHAIRMAN GRAYBILL: The Ayes have it. Will you move
15 the section again?

16 DELEGATE SCHILTZ: Mr. Chairman, I move that when
17 this committee does arise and report, after having had under
18 consideration section nine of the bicameral portion of the
19 Style and Drafting Report Number Three, it recommend the same
20 be adopted as amended.

21 CHAIRMAN GRAYBILL: So many as are in favor of that
22 motion, say Aye.

23 DELEGATES: Aye.

24 CHAIRMAN GRAYBILL: Opposed, No.

25 DELEGATES: (No audible response)

1 CHAIRMAN GRAYBILL: Section nine is adopted. Section
2 ten.

3 DELEGATE SCHILTZ: Mr. Chairman, I move that when this
4 committee does arise and report, after having had under consid-
5 eration section ten of the bicameral section -- portion of the
6 Style and Drafting Report Number Three, it recommend the same
7 be adopted. Mr. Chairman, we O.K.'d this this morning in the
8 same form except that there is bicameral language in section
9 ten of this portion.

10 CHAIRMAN GRAYBILL: Is there discussion of section
11 ten?

12 DELEGATE SCHILTZ: That's sub one, I guess.

13 CHAIRMAN GRAYBILL: Ten, sub one. All in favor, say
14 Aye.

15 DELEGATES: Aye.

16 CHAIRMAN GRAYBILL: Opposed, No.

17 DELEGATES: (No audible response)

18 CHAIRMAN GRAYBILL: It's adopted. Sub two.

19 DELEGATE SCHILTZ: Mr. Chairman, I move that when this
20 committee does arise and report, after having had under consid-
21 eration section ten, sub two, of the bicameral portion of Style
22 and Drafting Report Number Three, it recommend the same be
23 adopted. Mr. Chairman, this is identical with the material we
24 adopted this morning for unicameral.

25 CHAIRMAN GRAYBILL: Any discussion?

1 (No response)

2 CHAIRMAN GRAYBILL: All in favor, say Aye.

3 DELEGATES: Aye.

4 CHAIRMAN GRAYBILL: Opposed, No.

5 DELEGATES: (No audible response)

6 CHAIRMAN GRAYBILL: Sub two is adopted. Sub three.

7 DELEGATE SCHILTZ: Mr. Chairman, I move that when

8 this committee does arise and report, after having had under

9 consideration section ten, sub three, bicameral portion of

10 Style and Drafting Report Number Three, it recommend the same

11 be adopted. Mr. Chairman, this is the same as we adopted this

12 morning for the unicameral.

13 CHAIRMAN GRAYBILL: Any discussion of sub three?

14 (No response)

15 CHAIRMAN GRAYBILL: All in favor of sub three, say

16 Aye.

17 DELEGATES: Aye.

18 CHAIRMAN GRAYBILL: Opposed?

19 DELEGATES: (No audible response)

20 CHAIRMAN GRAYBILL: It's adopted. Sub four.

21 DELEGATE SCHILTZ: Mr. Chairman, I move that when

22 this committee does arise and report, after having had under

23 consideration section ten, sub four, the bicameral portion of

24 Style and Drafting Report Number Three, it recommend the same

25 be adopted. Mr. Chairman, this, again, is identical with the

1 material we adopted for unicameral this morning.

2 CHAIRMAN GRAYBILL: All in favor of sub four, say Aye.

3 DELEGATES: Aye.

4 CHAIRMAN GRAYBILL: Opposed?

5 DELEGATES: (No audible response)

6 CHAIRMAN GRAYBILL: It's adopted. Sub five.

7 DELEGATE SCHILTZ: Mr. Chairman, I move that when
8 this committee does arise and report, after having had under
9 consideration section ten, sub five, bicameral portion of
10 Style and Drafting Report Number Three, it recommend the same
11 be adopted. Mr. Chairman, we did not have this this morning.
12 It's a special provision for bicameral legislature, but there
13 are no changes other than style changes and they're very minor.

14 CHAIRMAN GRAYBILL: Is there any discussion of sub
15 five?

16 (No response)

17 CHAIRMAN GRAYBILL: All in favor of sub five, say
18 Aye.

19 DELEGATES: Aye.

20 CHAIRMAN GRAYBILL: Opposed?

21 DELEGATES: (No audible response)

22 CHAIRMAN GRAYBILL: It's adopted. Section eleven.

23 DELEGATE SCHILTZ: Mr. Chairman, I move that when
24 this committee does arise and report, after having had under
25 consideration section eleven, sub one, bicameral portion, Style

1 and Drafting Report Number Three, it recommend the same be
2 adopted. Mr. Chairman, these are style changes -- no, these
3 are the same provisions that were O.K.'d this morning in the
4 unicameral section.

5 CHAIRMAN GRAYBILL: Any discussion of section eleven,
6 sub one?

7 (No response)

8 CHAIRMAN GRAYBILL: All in favor of section eleven,
9 sub one, say Aye.

10 DELEGATES: Aye.

11 CHAIRMAN GRAYBILL: Opposed, No.

12 DELEGATES: (No audible response)

13 CHAIRMAN GRAYBILL: It's adopted. Sub two.

14 DELEGATE SCHILTZ: Mr. Chairman, I move that when
15 this committee does arise and report, after having had under
16 consideration section eleven, sub two, bicameral portion,
17 Style and Drafting Report Number Three, it recommend the same
18 be adopted. Mr. Chairman, this is identical to the material
19 adopted this morning in the unicameral.

20 CHAIRMAN GRAYBILL: Any discussion of eleven, sub
21 two?

22 (No response)

23 CHAIRMAN GRAYBILL: All in favor of eleven, sub two,
24 say Aye.

25 DELEGATES: Aye.

1 CHAIRMAN GRAYBILL: Opposed?

2 DELEGATES: (No audible response)

3 CHAIRMAN GRAYBILL: It's adopted. Eleven -- now,
4 let's make -- let's be careful -- oh, I see, you did strike
5 the three there.

6 DELEGATE SCHILTZ: Yes.

7 CHAIRMAN GRAYBILL: All right, now, eleven, sub
8 three, on line twenty-three, page ten.

9 DELEGATE SCHILTZ: Mr. Chairman, I move that when
10 this committee does arise and report, after having had under
11 consideration section eleven, sub three, bicameral portion,
12 Style and Drafting Report Number Three, it recommend the same
13 be adopted. Mr. Chairman, this is the same material as we
14 adopted in the unicameral.

15 CHAIRMAN GRAYBILL: Is there any discussion of
16 eleven, sub three?

17 Mrs. Erdmann.

18 DELEGATE ERDMANN: Mr. President, by eliminating the
19 two words, by a vote of a majority of all members present, by
20 eliminating and voting, I'm wondering if we really haven't
21 changed something because the people present would be answer-
22 ing to the roll call but you also have members who abstain from
23 voting on a particular item and I just wondered if that had
24 been considered by the committee.

25 CHAIRMAN GRAYBILL: What line are you on, Mrs. Erd-

1 mann?

2 DELEGATE SCHILTZ: What line are you on?

3 DELEGATE ERDMANN: Section one of Bills, section
4 eleven, the end of line twelve.

5 DELEGATE SCHILTZ: Well, I'll have to look at my
6 comments.

7 CHAIRMAN GRAYBILL: On section eleven, sub one, are
8 you talking about? I don't see the words, and voting.

9 DELEGATE ERDMANN: My point is, we have referred
10 before to a majority of the members present and voting and this
11 is my point. We have deleted the two words, and voting, and
12 I do believe this makes some difference in the actual count.

13 CHAIRMAN GRAYBILL: Mrs. Erdmann's point is to line
14 twelve, which we have gone over but we can open up. She thinks
15 the words, and voting, should be put after the word, present,
16 on line twelve, sub one in eleven.

17 Mr. Schiltz.

18 DELEGATE SCHILTZ: Well, we didn't have that material
19 to work with and we supplied what did get supplied there, I
20 think. I don't care whether you want to put it in or not. It
21 would be substantive, I think.

22 CHAIRMAN GRAYBILL: Well, I think Mrs. Erdmann's
23 point is that it isn't any more substantive than saying present.
24 I mean, either one of them is substantive in the sense that we
25 -- or, either one of them aren't in the sense that we didn't

1 say specifically.

2 DELEGATE SCHILTZ: Yes, well, it's what everybody
3 wants to do. I don't really care. Well, you see down on page
4 -- lines nineteen and twenty, we incorporated that material and
5 put it up above.

6 CHAIRMAN GRAYBILL: I see.

7 DELEGATE SCHILTZ: And there all it says is members
8 present and that's what we used in order that we wouldn't
9 change anything substantive.

10 CHAIRMAN GRAYBILL: Mrs. Erdmann, they have picked
11 up lines nineteen and twenty, which they struck out. Do you
12 care to make an amendment or are you willing to let it go, Mrs.
13 Erdmann?

14 DELEGATE ERDMANN: I'm going to let it go.

15 CHAIRMAN GRAYBILL: All right, you're willing to let
16 it go. Is there other discussion of sub three.

17 DELEGATE AASHEIM: Are we on sub --

18 CHAIRMAN GRAYBILL: We're on sub three, but if you
19 want to go back to sub one or two --

20 DELEGATE AASHEIM: In our original presentation
21 from the committee our wording went something like this--on
22 any vote which changes the status or substance of the bill,
23 resolution or rule, a vote of each member must be recorded.
24 I believe it's going to be confusing if we don't say the people
25 voting because if you don't say that, you have a head count

1 every time you vote, and I think that was the intent of the
2 committee to have the -- because you're going to have times
3 when people won't vote and if you have the numbers present,
4 you're going to have to make a head count. Mr. Chairman, may
5 we reconsider subsection one on section eleven.

6 CHAIRMAN GRAYBILL: The motion by Mr. Aasheim is to
7 reconsider subsection one of section eleven to take care of
8 this word, and voting. All those in favor of his motion to
9 reconsider, say Aye.

10 DELEGATES: Aye.

11 CHAIRMAN GRAYBILL: Opposed, No.

12 DELEGATES: No.

13 CHAIRMAN GRAYBILL: All right, the Chair is in doubt.
14 All those in favor of reconsidering, say Aye -- vote Aye on
15 the machine, and those opposed, vote No. Have all the Delegates
16 voted?

17 (No response)

18 CHAIRMAN GRAYBILL: Any Delegate wish to change his
19 vote?

20 (No response)

21 CHAIRMAN GRAYBILL: Forty-five having voted Aye and
22 twenty-five No, we will reconsider subsection one of section
23 eleven. Now, Mr. Aasheim, do you want to make a motion?

24 DELEGATE AASHEIM: Mr. Chairman, I move to amend
25 section eleven, subsection one, being line twelve, by adding

1 after the word, present, striking the period and adding, and
2 voting, period.

3 CHAIRMAN GRAYBILL: Mr. Aasheim has proposed to add
4 the word, and voting, so the line says: members present and
5 voting. The Chair is going to rule that that is still a Style
6 and Drafting change. Now, if anybody cares to challenge the
7 Chair, fine, but it seems to me it's not clear what members
8 present -- it certainly doesn't seem to me that we intended
9 that they have to recount the house every time and determine
10 a majority, so I'm going to rule that's a style change. If
11 anyone wants to challenge the Chair, they may. Otherwise,
12 debate is now open on Mr. Aasheim's amendment to add the words,
13 and voting, at the end of line twelve to that sentence. Is
14 there any discussion?

15 (No response)

16 CHAIRMAN GRAYBILL: All in favor of Mr. Aasheim's
17 motion to add the words, and voting, to the -- so it says,
18 a majority of all members present and voting, please say Aye.

19 DELEGATES: Aye.

20 CHAIRMAN GRAYBILL: Opposed, No.

21 DELEGATES: (No audible response)

22 CHAIRMAN GRAYBILL: So ordered. Mr. Schiltz, will
23 you remove section one, sub one?

24 DELEGATE SCHILTZ: Will I -- well, I was going to --
25 well, all right.

1 CHAIRMAN GRAYBILL: Unless you're not through with
2 it.

3 DELEGATE SCHILTZ: Well, I'm through with that. I
4 wanted someone to change the unicameral, too. I move that
5 when this committee does arise and report, after having had
6 under consideration section eleven, sub one, bicameral portion
7 of Style and Drafting Report Number Three, that it recommend
8 the same be adopted as amended.

9 CHAIRMAN GRAYBILL: Very well. Mr. Schiltz, the --
10 all in favor of Mr. Schiltz's amendment say Aye.

11 DELEGATES: Aye.

12 CHAIRMAN GRAYBILL: Opposed, No.

13 DELEGATES: (No audible response)

14 CHAIRMAN GRAYBILL: Sub one is adopted as amended.

15 DELEGATE SCHILTZ: Mr. Chairman.

16 CHAIRMAN GRAYBILL: Mr. Schiltz --

17 DELEGATE SCHILTZ: I move --

18 CHAIRMAN GRAYBILL: Just a moment. Make a note and
19 we have passed section eleven, sub one, in the unicameral but
20 we have not adopted the article and moved it out of Committee
21 of the Whole, so we can move to reconsider that at the end.

22 DELEGATE SCHILTZ: Well, I can make a note but it
23 would be just as easy to do it now.

24 CHAIRMAN GRAYBILL: Very well, while everyone is on
25 it, let's turn to page --

1 DELEGATE SCHILTZ: Thirteen.

2 CHAIRMAN GRAYBILL: -- thirteen, line six. Do you
3 want to make a motion that we reconsider section eleven, sub
4 one, of the unicameral article, Mr. Schiltz?

5 DELEGATE SCHILTZ: I make that motion for the appar-
6 ent reasons.

7 CHAIRMAN GRAYBILL: All in favor of Mr. Schiltz's
8 motion say Aye.

9 DELEGATES: Aye.

10 CHAIRMAN GRAYBILL: Opposed?

11 DELEGATES: (No audible response)

12 CHAIRMAN GRAYBILL: Very well, it's open. Now, do
13 you want to make your motion to --

14 DELEGATE SCHILTZ: Yes. I move that section eleven
15 of the unicameral portion of Style and Drafting Report Number
16 Three be amended at line six on page thirteen by adding after
17 the word, present, the words, and voting.

18 CHAIRMAN GRAYBILL: Is there discussion?

19 (No response)

20 CHAIRMAN GRAYBILL: All in favor say Aye.

21 DELEGATES: Aye.

22 CHAIRMAN GRAYBILL: Opposed, No.

23 DELEGATES: (No audible response)

24 CHAIRMAN GRAYBILL: Now, do you want to move section
25 eleven one of the unicameral?

1 DELEGATE SCHILTZ: I move that when this committee
2 does arise and report, after having under consideration section
3 eleven, sub one, the unicameral portion, Style and Drafting
4 Report Number Three, that it recommend the same do pass -- be
5 adopted as amended.

6 CHAIRMAN GRAYBILL: All in favor of that motion, say
7 Aye.

8 DELEGATES: Aye.

9 CHAIRMAN GRAYBILL: Opposed, No.

10 DELEGATES: (No audible response)

11 CHAIRMAN GRAYBILL: Section eleven, sub one of the
12 unicameral is adopted and we're back on section eleven, sub
13 three of the bicameral on page ten, second page ten.

14 DELEGATE SCHILTZ: Were we sub three? Have I moved
15 that?

16 CHAIRMAN GRAYBILL: Well, move it again.

17 DELEGATE SCHILTZ: I move that when this committee
18 does arise and report, after having had under consideration
19 section eleven, sub three, bicameral portion, Style and Draft-
20 ing Report Number Three, that it recommend the same be adopted.

21 Mr. Chairman.

22 CHAIRMAN GRAYBILL: Mr. Schiltz.

23 DELEGATE SCHILTZ: This only has -- well, it doesn't
24 even have any changes. It's just identical to the report we
25 adopted this morning in the bicameral, or the section -- sub-

1 section.

2 CHAIRMAN GRAYBILL: Any discussion of sub three?

3 (No response)

4 CHAIRMAN GRAYBILL: All in favor say Aye.

5 DELEGATES: Aye.

6 CHAIRMAN GRAYBILL: Opposed, No.

7 DELEGATES: (No audible response)

8 CHAIRMAN GRAYBILL: It's adopted. Sub four.

9 DELEGATE SCHILTZ: I move that when this committee
10 does arise and report, after having had under consideration
11 section eleven, sub four, bicameral portion Style and Drafting
12 Report Number Three, it recommend the same be adopted. Mr.
13 Chairman, this is the same, again, as the one we adopted this
14 morning in the unicameral.

15 CHAIRMAN GRAYBILL: Is there any discussion of sub
16 four, eleven sub four?

17 (No response)

18 CHAIRMAN GRAYBILL: All in favor, say Aye.

19 DELEGATES: Aye.

20 CHAIRMAN GRAYBILL: Opposed, No.

21 DELEGATES: (No audible response)

22 CHAIRMAN GRAYBILL: It's adopted. Sub five.

23 DELEGATE SCHILTZ: Sub four, wasn't it?

24 CHAIRMAN GRAYBILL: Now we go to sub five.

25 DELEGATE SCHILTZ: Yes. Mr. Chairman, I move that

1 when this committee does arise and report, after having had
2 under consideration section eleven, sub five, bicameral portion,
3 Style and Drafting report number three, that it recommend the
4 same be adopted. Mr. Chairman, there are no changes of any
5 significance. It's identical with the provision we adopted
6 this morning for unicameral.

7 CHAIRMAN GRAYBILL: Any discussion of sub five?

8 (No response)

9 CHAIRMAN GRAYBILL: All in favor of sub five, say Aye.

10 DELEGATES: Aye.

11 CHAIRMAN GRAYBILL: Opposed, No.

12 DELEGATES: (No audible response)

13 CHAIRMAN GRAYBILL: So ordered. Sub six.

14 DELEGATE SCHILTZ: Mr. Chairman, I move that when
15 this committee does arise and report, after having had under
16 consideration section eleven, sub six, bicameral portion,
17 Style and Drafting report number three, that it recommend the
18 same be adopted. Mr. Chairman, there is no change.

19 CHAIRMAN GRAYBILL: No change from the unicameral.

20 DELEGATE SCHILTZ: From the unicameral.

21 CHAIRMAN GRAYBILL: All in favor, say Aye.

22 DELEGATES: Aye.

23 CHAIRMAN GRAYBILL: Opposed, No.

24 DELEGATES: (No audible response)

25 CHAIRMAN GRAYBILL: It's adopted. Section twelve.

1 DELEGATE SCHILTZ: Mr. Chairman, I move that when
2 this committee does arise and report, after having had under
3 consideration section twelve, bicameral portion, Style and
4 Drafting report number three, that it recommend the same be
5 adopted. Mr. Chairman, this is identical, again, with the
6 unicameral section that compares with it.

7 CHAIRMAN GRAYBILL: Any discussion?

8 (No response)

9 CHAIRMAN GRAYBILL: All in favor of section twelve,
10 say Aye.

11 DELEGATES: Aye.

12 CHAIRMAN GRAYBILL: Opposed, No.

13 DELEGATES: (No audible response)

14 CHAIRMAN GRAYBILL: It's adopted. Now, section
15 thirteen.

16 DELEGATE SCHILTZ: We should have an amendment by
17 Mr. Harlow, I think.

18 CHAIRMAN GRAYBILL: Mr. Harlow, is there any reason
19 it can't be identical to the one this morning?

20 DELEGATE HARLOW: Section one -- or, section thirteen,
21 sub one, will be identical. Section two will be a little --
22 section two and three will be just a little bit different be-
23 cause the wording in these two sections are a little different
24 than what the wording was in the section this morning.

25 CHAIRMAN GRAYBILL: Have you got them written out

1 there?

2 DELEGATE HARLOW: I have them. There's only just
3 two little cross-outs.

4 CHAIRMAN GRAYBILL: All right, do you want to show
5 us in section thirteen what you want to change?

6 DELEGATE HARLOW: Yes. Section thirteen, subsection
7 one, will read identical to the amendment we put in this morn-
8 ing. The governor, executive officers, heads of state depart-
9 ments, judicial officers, and such other officers as may be
10 provided by law are subject to impeachment and upon conviction
11 shall be removed from office. Other proceedings for removal
12 from public office for cause may be provided by law. Subsec-
13 tion two will be the same as what is in the wording here on
14 page eleven, subsection two, except we will cross out the words
15 in line twenty-four, removable by, and the rest of that section
16 will remain the same. And, in subsection three the wording as
17 is on your page eleven there will be identical, except on page
18 twenty-eight, we will cross out the words, for impeachment.
19 Otherwise, section two -- subsection two and three will remain
20 the same and subsection one will be identical to the words that
21 I just read of what we put in this morning.

22 CHAIRMAN GRAYBILL: Very well, the Chair will allow
23 an amendment by Mr. Harlow, the sense of which is to change
24 subsection one of section thirteen so it reads identical with
25 the one we adopted for unicameral in the morning. Then, in

1 subsection two it will strike the words, -- I've stricken them
2 so well I can't read them.

3 DELEGATE HARLOW: Removal by.

4 CHAIRMAN GRAYBILL: Removal by, from line fourteen.
5 And in subsection three, it will strike the words, --

6 DELEGATE HARLOW: For impeachment.

7 CHAIRMAN GRAYBILL: -- for impeachment, in line
8 twenty-eight. The sense of this amendment will then make this
9 section read identical with the one on unicameral. Is that
10 correct, or -- make it read substantially identical with the
11 unicameral?

12 DELEGATE HARLOW: Except we do not -- the words, may
13 select the senate as tribunal, will be different than what is
14 in the unicameral, because there the -- it shall be provided
15 -- and shall provide for a tribunal.

16 CHAIRMAN GRAYBILL: Right. So, it provides for a dif-
17 ferent method of picking the court but it makes a parallel
18 change in the impeachment section to that in unicameral.

19 DELEGATE HARLOW: That's correct.

20 CHAIRMAN GRAYBILL: Mr. Schiltz.

21 DELEGATE SCHILTZ: I had understood, or I had hoped
22 at least that these changes would provide that impeachment
23 charges were brought in one body and tried in another and I
24 don't have his amendment before me, but I wonder if that is
25 contemplated? You see, in unicameral we had to say that they

1 would provide for a tribunal and traditionally, and the way I
2 think it's always been done in the past in this impeachment
3 article, the house heard the charges and the senate tried them.

4 CHAIRMAN GRAYBILL: I think the difficulty is that
5 when we adopted that, Mr. Schiltz, in the Convention Committee
6 of the Whole a few days ago, we made it general. We didn't
7 specify. Isn't that correct? Subsection two says now, as
8 amended: The legislature shall provide for the manner, proce-
9 dure, and causes for impeachment and may select the senate as
10 a tribunal, but it doesn't say must. That's the way we adopted
11 it the other day.

12 DELEGATE SCHILTZ: All right. Mr. Chairman -- oh,
13 I guess you want to get that amendment.

14 CHAIRMAN GRAYBILL: I'm not sure that Mr. Harlow
15 did this but, members of the Committee, you have before you the
16 amendment of Mr. Harlow that when this committee does arise
17 and report, after having had under consideration section thir-
18 teen, sub one, two and three, that the same -- that we recom-
19 mend that the same be adopted as amended. Is there discussion?

20 (No response)

21 CHAIRMAN GRAYBILL: All in favor, then, of that mo-
22 tion, say Aye.

23 DELEGATES: Aye.

24 CHAIRMAN GRAYBILL: Opposed?

25 DELEGATES: (No audible response)

1 CHAIRMAN GRAYBILL: It's adopted as amended. All
2 right, Mr. Schiltz, subsection four of thirteen.

3 DELEGATE SCHILTZ: Mr. Chairman, I move that when
4 this committee does arise and report, after having had under
5 consideration section thirteen, subsection four, bicameral por-
6 tion, Style and Drafting report number three, that it recommend
7 the same be adopted. Mr. Chairman, this is the same as the
8 unicameral section that corresponds with it that was adopted
9 this morning.

10 CHAIRMAN GRAYBILL: Any discussion of subsection four?

11 (No response)

12 CHAIRMAN GRAYBILL: All in favor, say Aye.

13 DELEGATES: Aye.

14 CHAIRMAN GRAYBILL: Opposed, No.

15 DELEGATES: (No audible response)

16 CHAIRMAN GRAYBILL: Subsection four is adopted. Now,
17 section fourteen.

18 DELEGATE SCHILTZ: Mr. Chairman, I move that when
19 this committee does arise and report, after having had under
20 consideration section fourteen, subsection one, bicameral por-
21 tion, Style and Drafting report number three, it recommend
22 the same be adopted. Mr. Chairman, this is a special section
23 that applies only to bicameral. We made one change that
24 might be considered substantive. If you'll look at line eight,
25 we inserted the word, adjoining, as a new word; however, we

1 picked it up from below where they talked about the districts
2 consisting of compact and contiguous territory and we thought
3 that was warranted.

4 CHAIRMAN GRAYBILL: Is there discussion of section
5 fourteen?

6 (No response)

7 CHAIRMAN GRAYBILL: If not, all in favor of section
8 fourteen, say Aye.

9 DELEGATES: Aye.

10 CHAIRMAN GRAYBILL: Opposed?

11 DELEGATES: (No audible response)

12 CHAIRMAN GRAYBILL: It's adopted. Section fourteen,
13 sub two.

14 DELEGATE SCHILTZ: Mr. Chairman, I move that when
15 this committee does arise and report, after having had under
16 consideration section fourteen, subsection two, bicameral por-
17 tion, Style and Drafting report number three, that it recommend
18 the same be adopted. Mr. Chairman, this is the same as the
19 unicameral corresponding section adopted this morning.

20 CHAIRMAN GRAYBILL: All those in favor of fourteen,
21 sub two, say Aye.

22 DELEGATES: Aye.

23 CHAIRMAN GRAYBILL: Opposed?

24 DELEGATES: (No audible response)

25 CHAIRMAN GRAYBILL: It's adopted. Sub three.

1 DELEGATE SCHILTZ: Mr. Chairman, I move that when
2 this committee does arise and report, after having had under
3 consideration section fourteen, subsection three, bicameral
4 portion, Style and Drafting report number three, that it recom-
5 mend the same be adopted. Mr. Chairman, again, this is the
6 same as the subsection we adopted this morning for unicameral.

7 CHAIRMAN GRAYBILL: Is there discussion?

8 (No response)

9 CHAIRMAN GRAYBILL: All in favor of fourteen, sub
10 three, say Aye.

11 DELEGATES: Aye.

12 CHAIRMAN GRAYBILL: Opposed?

13 DELEGATES: (No audible response)

14 CHAIRMAN GRAYBILL: It's adopted. How about section
15 fifteen, Mr. Schiltz?

16 DELEGATE SCHILTZ: Mr. Chairman, I move that when
17 this committee does arise and report, after having had under
18 consideration section fifteen, bicameral portion, Style and
19 Drafting report number three, that it recommend the same be
20 adopted. This is the same as sixteen, which we O.K.'d this
21 morning in the unicameral section.

22 CHAIRMAN GRAYBILL: So many as shall be in favor of
23 section fifteen, say Aye.

24 DELEGATES: Aye.

25 CHAIRMAN GRAYBILL: Opposed?

1 DELEGATES: (No audible response)

2 CHAIRMAN GRAYBILL: It's adopted. Section sixteen,
3 Mr. Schiltz.

4 DELEGATE SCHILTZ: Mr. Chairman, I move to amend
5 section sixteen as it's written on page thirteen, line nineteen,
6 by striking the word, senators, and inserting in lieu thereof
7 the word, legislators.

8 CHAIRMAN GRAYBILL: Mr. Schiltz has moved in line
9 nineteen to strike the word, senators, and put in the word,
10 legislators. All in favor say Aye.

11 DELEGATES: Aye.

12 CHAIRMAN GRAYBILL: Opposed, No.

13 DELEGATES: (No audible response)

14 DELEGATE SCHILTZ: That only proves we're fallible
15 up there, Mr. Chairman. Mr. Chairman, I move that when this
16 committee does arise and report, after having had under con-
17 sideration section sixteen, bicameral portion, Style and Draft-
18 ing proposal number three, as amended, it recommend the same
19 do pass.

20 CHAIRMAN GRAYBILL: Is there discussion of section
21 sixteen of the bicameral legislative article?

22 (No response)

23 CHAIRMAN GRAYBILL: If not, all in favor say Aye.

24 DELEGATES: Aye.

25 CHAIRMAN GRAYBILL: Opposed, No.

1 DELEGATES: (No audible response)

2 CHAIRMAN GRAYBILL: It's adopted.

3 DELEGATE SCHILTZ: Mr. Chairman.

4 CHAIRMAN GRAYBILL: Mr. Schiltz.

5 DELEGATE SCHILTZ: I move that the committee send back
6 for, or re-refer --

7 CHAIRMAN GRAYBILL: Mr. Schiltz, we're not through.
8 We've got to go to fifteen-three on page sixteen. You will re-
9 member this morning, ladies and gentlemen, that when we got to
10 section fifteen on -- referendum on unicameral legislature --
11 we passed, or we adopted subsection one and subsection two and
12 when we got to subsection three the difficulty became that we
13 needed to start talking about the nature of the legislative
14 article. It seems to me that we have to pick up now, Mr.
15 Schiltz, the amendments we have just made.

16 DELEGATE SCHILTZ: Yes, Mr. Chairman, and I'm not
17 sure I'm prepared to do that at this moment but what I would
18 say is that at the end of this consideration, I will move that
19 the report be re-referred to Style and Drafting for incorpora-
20 tion of all amendments and for the additional purpose of seeing
21 if there are any anomalies that we have created by these amend-
22 ments that I haven't been able to pick up as we've gone along.

23 CHAIRMAN GRAYBILL: Well, the Chair -- well, let's
24 do this. On page seventeen -- if you'll all turn to page seven-
25 teen, the first major amendment is on line two. You have to

1 put in the fifty and forty in place of the fifty-three and fif-
2 ty. And on line three, you have to put in a hundred and eighty
3 in place of the hundred and six and a hundred. So, in other
4 words, we have to amend section two as to size, so that it is
5 fifty-forty, one hundred-eighty. That's the first amendment.
6 Then we might just mark these up. Everything else is O.K. un-
7 til you get to number eleven, sub one -- I don't think you ever
8 get there, do you? Yes, you do. No, you don't. Then we have
9 to amend the one on impeachment. The bottom of page seventeen,
10 section thirteen, has to be amended as per the Harlow amend-
11 ment.

12 DELEGATE SCHILTZ: Mr. Chairman.

13 CHAIRMAN GRAYBILL: Mr. Schiltz.

14 DELEGATE SCHILTZ: Couldn't we move those as amended?
15 Wouldn't that take care of it?

16 CHAIRMAN GRAYBILL: Yes, I think we can. I'm just
17 trying to point out which ones we have amended. Then the rest
18 of them, except for --

19 DELEGATE SCHILTZ: Well, Mr. Chairman, I would be
20 inclined to say --

21 CHAIRMAN GRAYBILL: That's all.

22 DELEGATE SCHILTZ: -- that we adopt section -- that
23 I move for the adoption of section fifteen, sub three, as
24 amended, and that would incorporate all the amendments. Then
25 we'll pick them up upstairs.

1 CHAIRMAN GRAYBILL: Very well, do you want to make
2 that motion?

3 DELEGATE SCHILTZ: Mr. Chairman, I move that when
4 this committee does arise and report, after having had under
5 consideration section fifteen, sub three, unicameral portion,
6 Style and Drafting report number three, that it recommend the
7 same be adopted as amended. If I may speak to it?

8 CHAIRMAN GRAYBILL: You may. Let me see if I can't
9 summarize. The changes are section two that we just marked on
10 page seventeen and section thirteen at the bottom of page
11 seventeen, and then, Mr. Schiltz, you have some language in
12 section fourteen that doesn't appear anywhere else that maybe
13 we should consider.

14 DELEGATE SCHILTZ: Are you talking about section
15 fourteen, which is --

16 CHAIRMAN GRAYBILL: Section fourteen, sub four and
17 five.

18 DELEGATE SCHILTZ: Are you talking about the one on
19 page eighteen?

20 CHAIRMAN GRAYBILL: Page nineteen, yes.

21 DELEGATE SCHILTZ: Well, that's subsection -- yes.

22 CHAIRMAN GRAYBILL: In other words, the two lines --
23 if you'll look at line eleven on page nineteen, ladies and gen-
24 tlemen, subsections four and five deal with this matter, Mr.
25 Schiltz, of the election and I think the only -- we haven't

1 looked at them anywhere yet.

2 DELEGATE SCHILTZ: Subsection four?

3 CHAIRMAN GRAYBILL: Have we looked at fourteen-four?

4 I don't think so. The members of the unicameral body shall
5 remain in effect -- in office and their authority to act shall
6 continue until the members of a bicameral body are elected and
7 qualified. We haven't considered that yet.

8 DELEGATE SCHILTZ: Oh, that's right. That's new.

9 CHAIRMAN GRAYBILL: And the next one there, the same
10 -- the present senate chambers shall exist --

11 DELEGATE SCHILTZ: That's right.

12 CHAIRMAN GRAYBILL: Why don't you --

13 DELEGATE SCHILTZ: I'll move the adoption of those
14 two and six, also.

15 CHAIRMAN GRAYBILL: I think that fourteen-one, two
16 and three have been adopted; four, five and six have not been
17 adopted.

18 DELEGATE SCHILTZ: Right.

19 CHAIRMAN GRAYBILL: So, if you would move --

20 DELEGATE SCHILTZ: Mr. Chairman --

21 CHAIRMAN GRAYBILL:--four, five and six -- yes.

22 DELEGATE SCHILTZ: -- I move that when this committee
23 does arise and report, after having had under consideration
24 the bicameral portion, Style and Drafting report number three,
25 section fifteen, subsection (f), sub-subsections four, five

1 and six, that it recommend the same be adopted. No, I don't
2 want to say that, I guess.

3 CHAIRMAN GRAYBILL: Yes, you will.

4 DELEGATE SCHILTZ: Well, that -- all right -- as
5 amended.

6 CHAIRMAN GRAYBILL: Is there any discussion on four,
7 five or six by you or anyone else?

8 (No response)

9 CHAIRMAN GRAYBILL: I'm on page nineteen, lines
10 eleven to twenty-one, ladies and gentlemen. These three sub-
11 sections deal only with the unicameral elections, assuming
12 there is one. Is there any changes required there? Is every-
13 body happy with the Style and Drafting language?

14 DELEGATE SCHILTZ: We didn't make any significant
15 changes. It's all transition and I'm glad you picked it up
16 because I forgot it, but other than what we show there, there
17 are no changes. They're all style changes.

18 CHAIRMAN GRAYBILL: So many as shall be in favor of
19 subs four, five and six of this section fourteen, which is (f)
20 of fifteen, say Aye.

21 DELEGATES: Aye.

22 CHAIRMAN GRAYBILL: Opposed?

23 DELEGATES: (No audible response)

24 CHAIRMAN GRAYBILL: They are adopted. Now, Mr.
25 Schiltz, if you'll move that other one as amended, we're in

1 business.

2 DELEGATE SCHILTZ: Mr. Chairman, I move that when
3 this committee does arise and report, after having had under
4 consideration section fifteen of the bicameral portion, Style
5 and Drafting report number three, that it recommend the same
6 be adopted as amended.

7 CHAIRMAN GRAYBILL: Is there discussion?

8 (No response)

9 CHAIRMAN GRAYBILL: If not, all in favor say Aye.

10 DELEGATES: Aye.

11 CHAIRMAN GRAYBILL: Opposed, No.

12 DELEGATES: (No audible response)

13 CHAIRMAN GRAYBILL: It's adopted. Now, Mr. Schiltz,
14 make your motion.

15 DELEGATE SCHILTZ: Mr. Chairman, I ask that -- or,
16 I move that Style and Drafting report number three be re-refer-
17 red to the committee for incorporation of amendments and for
18 further examination, and with privilege to ask that it be re-
19 ferred back by the committee to Order of Business Number Five.

20 CHAIRMAN GRAYBILL: Very well, ladies and gentlemen,
21 the purpose of Mr. Schiltz's amendment, or motion, is to take
22 the legislative article with the changes we've made this morn-
23 ing, back to Style and Drafting and they'll go through them
24 and see that they're all straight, and if we've missed any,
25 they'll come back, but if not, they will move -- we will move

1 their report straight on to Order of Business Number Five. Now,
2 that's the sense of the motion.

3 Mr. Aasheim.

4 DELEGATE AASHEIM: A point of information, Mr. Chair-
5 man. I don't have my sheet here. What is Order of Business
6 Number Five?

7 CHAIRMAN GRAYBILL: Well, that's final adoption where
8 it would go after this style and drafting. We ordinarily would
9 move it straight to Order of Business Number Five now, but we
10 are proposing to send it back to the committee for them to
11 check out all of this work that we've done today and see that
12 they haven't missed anything, and then move it to Order of Bus-
13 iness Number Five unless there are changes that they think we
14 have overlooked.

15 DELEGATE AASHEIM: Well, Mr. Chairman, for a point of
16 further information, I think this body wants to know how this
17 body stands on the two propositions and I'd like to have the
18 information of the Chair when we may make this motion. After
19 tomorrow it would be too late.

20 CHAIRMAN GRAYBILL: I take it you're talking about
21 testing the body on unicameral and bicameral. Is that what
22 you're talking about?

23 DELEGATE AASHEIM: Yes, I want to make a motion now
24 and I think that will test the body, and I wonder if this is
25 the time for the motion to determine the position of these

1 propositions on the ballot.

2 CHAIRMAN GRAYBILL: Well, it --

3 DELEGATE AASHEIM: I would be willing to wait until
4 tomorrow morning, nine o'clock, if you would want -- if you
5 would give us an opportunity to at that time, before we go on
6 to Order of Business Number Five.

7 CHAIRMAN GRAYBILL: All right, now, the Chair will
8 explain what the Chair feels the situation is. This body moved
9 the first day that it discussed legislature to send the legis-
10 lative article to Style and Drafting as a dual article and we
11 did send it as a dual article and we've treated it as a dual
12 article all the way through and we've now approved it again as
13 a dual article. I realize that some people want to test it.
14 I don't know what your purpose in testing it is except for your
15 own curiosity. It seems to me that it really does nothing to
16 aid us in our problem here. Therefore, the Chair is not very
17 anxious to test it because if it gets tested and somebody loses
18 badly, we may be back redoing the entire legislative article,
19 at which point I'm not very happy to start. Now, the Chair has
20 explained before that there is an opportunity when Style and
21 Drafting brings its budget -- its ballot recommendation in here,
22 to make a substitute motion or to amend in some way its ballot
23 proposal so that you can test it at that time. If your pur-
24 pose in testing this, ladies and gentlemen, is purely for cur-
25 iosity, I suggest that you do it on a yellow pad, but once you

1 get this body committed more than half to one of these two
2 things, then you have the problem of what you're doing when you
3 go to the public after doing that. What this body has really
4 said so far is that it's going to put this issue to the public
5 as a dual issue. I really do not see what purpose that it then
6 does to force everybody here to take a stand and count noses
7 except if it's a matter of going out and campaigning on the
8 basis of that. Now, the time to do that, it seems to the Chair,
9 is at the time that we have the ballot, and if you really want
10 to knock unicameral out or knock bicameral out, that's the time.
11 If your purpose is not to knock it out but merely to get a head
12 count, I suggest you pass a yellow pad up and down the rows and
13 find out, but I think it's very dangerous to start fooling
14 around and getting a vote one way or another unless you're
15 willing to run the risk of one of these things not going on
16 the ballot.

17 DELEGATE AASHEIM: Mr. Chairman, may I state my po-
18 sition?

19 CHAIRMAN GRAYBILL: Surely.

20 DELEGATE AASHEIM: You know, having -- my name be-
21 gins with a double A and I'm in a very favorable position
22 usually, and right at this time, as committee chairman, I'm
23 concerned about which of these proposals is going to be on the
24 ballot first and that's the reason I'm trying to find out --

25 CHAIRMAN GRAYBILL: All right, if that's your pur-

1 pose, then you are surely premature because that -- which goes
2 on first or the form in which they go on is Style and Drafting's
3 and not Legislative's or this Convention's prerogative to make
4 the recommendation. Then this body can decide and can put any-
5 thing on first or last or in red or green or blue ink if they
6 want to, but not until Style and Drafting has considered that
7 matter and made its ballot recommendation.

8 DELEGATE AASHEIM: Well, at this time I shall pass
9 further action. If somebody else wants to make a move, it's
10 entirely up to anyone else.

11 CHAIRMAN GRAYBILL: Now, we have a motion before us
12 and the motion is whether or not to send this back to Style
13 and Drafting for checking and then, without coming back to the
14 body, put it to Order of Business Number Five unless there are
15 errors in it. Do you want to discuss the motion, Mr. Drum?

16 DELEGATE DRUM: Mr. Chairman, a point of information
17 more than --

18 CHAIRMAN GRAYBILL: Very well.

19 DELEGATE DRUM: -- discuss a motion. The question
20 may come up at some point in the minds of the electorate, did
21 we ever take a vote as to whether this body favored a unicam-
22 eral or a bicameral, and it seems to me that at some point we
23 should make an indication, which has been averted to date, and
24 I think that at the early time that we made the decision that
25 we were going to accept both on the ballot, some of us felt we

1 would hear a little more debate pro or con on bicameral or on
2 unicameral, and I wonder if it may strengthen the posture of
3 the Convention in the eyes of those who we represent if they
4 felt an opinion were coming out of this Convention, and I ask
5 you for an opinion of this, Mr. Chairman.

6 CHAIRMAN GRAYBILL: Well, as I say, I'm not saying
7 that one isn't coming out and I can think of some ways to do
8 it, but I think you ought to think carefully about it before
9 you do do it. If it's the sense of this body that it's going
10 on the ballot, there's a good question as to whether or not it
11 needs to come out or whether it is helpful to have it come out.
12 But, assuming you decided it was helpful, I can think of a lot
13 of ways to get it out. If you want one right off the top of
14 my head, why don't you make a resolution and put it in and
15 we'll -- that it be the sense of this body that they prefer the
16 unicameral thing and we'll take a vote some morning before we
17 get into Committee of the Whole and we'll find out how everybody
18 feels, but I don't see it does a whole lot of -- what I'm ter-
19 ribly afraid of is that about the time we find out that sixty-
20 five percent of you are in favor of one or the other, we are
21 going to redo the legislative article, and I'm not anxious to
22 do that. I think we've made our position clear and I think
23 we've made it clear with the public that this thing is going on
24 the ballot and I think it would be very dangerous for us to try
25 and get it off of there now and, quite frankly, I don't trust

1 sixty-five percent of you, if you happen to be on one side.

2 (Laughter)

3 CHAIRMAN GRAYBILL: Mr. Drum, does that answer your
4 question?

5 DELEGATE DRUM: Would you yield to a question? What
6 if it were eighty-nine or ninety-nine percent, or eighty-one
7 percent? Shouldn't we know as a Convention what the feeling
8 of this Convention was? I think we've had a system of legis-
9 lation here for a good many years and we're going to look fool-
10 ish if we agree to change it without knowing what the consen-
11 sus of this body is.

12 CHAIRMAN GRAYBILL: Mr. Drum, I'm not going to stop
13 this body from finding out if it wants to, but I may make them
14 do it while they are in order and not while they're out of
15 order, and we're on a different motion and I don't think that
16 this is the place nor the time to do that.

17 DELEGATE AASHEIM: Mr. Chairman.

18 CHAIRMAN GRAYBILL: Mr. Aasheim.

19 DELEGATE AASHEIM: I move that when Style and Draft-
20 ing has done their work that this legislative article be re-
21 ferred back to General Orders.

22 CHAIRMAN GRAYBILL: Now, let's see, we have Schiltz's
23 -- I'd better catch up here -- Schiltz's motion to refer to
24 Style and Drafting with a right to go to number five unless
25 there's trouble. Is that the sense of your motion, Mr. Schiltz?

1 DELEGATE SCHILTZ: That's right.

2 CHAIRMAN GRAYBILL: Unless you find something wrong,
3 you'll send it straight on to number five. Now, I have Mr. --
4 that's your motion. Now, Mr. Aasheim has a substitute motion
5 to refer to Style and Drafting and back to General Orders. Is
6 that what you're saying?

7 DELEGATE AASHEIM: Right.

8 CHAIRMAN GRAYBILL: This is the legislative article.
9 Very well, Mrs. Bates, do you want to discuss Mr. Aasheim's
10 motion?

11 DELEGATE BATES: Mr. Chairman, when we discussed this
12 in committee and came out with the recommendation to discuss
13 and to write two very good articles on the bicameral and the
14 unicameral, the committee all held to this until these articles
15 were written. After that, we had decided we could all go our
16 own way if it came to a vote on the unicameral or the bicameral.
17 I wonder if it would be out of order to ask that this committee,
18 unless they can get a two-thirds vote for one or the other, that
19 they do refer it to the people. Would that be possible, or
20 would I be out of order? Or perhaps this could be done when
21 it comes back on General Orders.

22 CHAIRMAN GRAYBILL: Well, it would seem to me that
23 any motion as to the form of the ballot is out of order at this
24 time since we have no recommendation from Style and Drafting.
25 I think when Style and Drafting comes in, if you want to make

1 a motion that unless two-thirds agree, why, it has to go to
2 the people, why, I suppose it would be perfectly normal then.
3 Right now we are trying to decide whether to re-refer this to
4 Style and Drafting and if so, where it goes when it comes back.
5 Is there more discussion on Mr. Aasheim's motion to refer it
6 to Style and Drafting and back to General Orders?

7 Mr. Schiltz.

8 DELEGATE SCHILTZ: Style and Drafting has no problem.
9 I think that whatever we come back with will be very brief and
10 we can dispense with it in a matter of five minutes.

11 CHAIRMAN GRAYBILL: Mr. Felt.

12 DELEGATE FELT: I'd like a little clarification, per-
13 haps from the Chair. If we vote for the motion of Delegate
14 Aasheim, is this setting the stage for a future debate then as
15 to what the position on the ballot would be for these alter-
16 native positions?

17 CHAIRMAN GRAYBILL: Not in the view of the Chair it
18 isn't. It would seem to me we would have to --

19 DELEGATE FELT: Well, I would like to know just what
20 the effect of a vote on this motion would be then.

21 CHAIRMAN GRAYBILL: All right, well, Mr. Felt, you
22 understand that I am perfectly willing to entertain any motion
23 anyone makes, but I don't think Mr. Aasheim's motion, if it
24 prevails and gets this back on General Orders, then the Chair
25 will insist that we do what we do on General Orders--namely,

1 we consider the style changes that they have made and we will
2 not discuss substance at that time unless you suspend the or-
3 ders -- suspend the rules.

4 DELEGATE FELT: Is this a motion to get us back on
5 General Orders right now?

6 CHAIRMAN GRAYBILL: No, it's to refer it to the com-
7 mittee and then come back on General Orders again, say, tomor-
8 row. At that time, the Chair would take the position that we
9 have to discuss whether Style and Drafting's changes are cor-
10 rect and if they are, I would think that we could not discuss
11 matters of substance tomorrow unless we suspend the rules.

12 DELEGATE FELT: I had thought that we would -- after
13 Style and Drafting acted, that it automatically came back here
14 to us and we didn't need a motion just to discuss form changes
15 again, that it would automatically be discussed by us.

16 CHAIRMAN GRAYBILL: Well, Mr. Felt, ordinarily at
17 this point we have now adopted Style and Drafting's proposals
18 here, and at this point we ordinarily refer it to General Or-
19 ders -- to Order of Business Number Five. But, since there
20 were so many changes, Mr. Schiltz asked that it go back to his
21 committee so that he can check it out and see that it's all
22 right, and he asked that it go back to his committee and if
23 it's all right, go automatically to Order of Business Number
24 Five. Now, Mr. Aasheim has amended that, that it go back to
25 him and come back to this body on Order of Business Number Ten.

1 DELEGATE FELT: I see.

2 CHAIRMAN GRAYBILL: And you asked whether or not that
3 would give us an opportunity to open up the question that you
4 -- that these people are talking about and I think it would not
5 because that would be a substantive matter if we discussed
6 whether to put one or the other on the ballot and it does not
7 seem that we are ready to discuss the form of the ballot yet.
8 No one seems to want to wait. When we get to Style and Draft-
9 ing --

10 DELEGATE FELT: Mr. Chairman, I don't want a misun-
11 derstanding. I think -- I felt that you had ruled correctly,
12 that this was not the proper time, and I wanted to make sure
13 that this motion wouldn't have the effect of overturning the
14 position the Chair had taken because it seems to me, too, that
15 neither today nor tomorrow would be the proper time to take up
16 that question.

17 CHAIRMAN GRAYBILL: It's the Chair's view that if you
18 want to take this up at the proper time, the proper time is
19 when you debate ballot, which you're going to do before you
20 get out of here and the Style and Drafting Committee will draw
21 a ballot and that ballot will be up for debate, and if you
22 don't like it, you can move to strike what they did on legis-
23 lative and put it on the ballot one way or the other, or neither
24 way, whatever you want, and at that time we can debate it as
25 much as we want. Of course, that's going to be near the end.

1 Other than that, it seems to me the only other way I can see
2 of getting the consensus of this body -- well, there are two
3 ways. One is to suspend the rules and go right back in and
4 start all over again on legislature, and the second way -- that
5 is on one, two and three of the legislative article -- the
6 second way would be, if you want to send to the Rules Committee
7 a rule and get the sense of the body, rather than in effect the
8 substance of it, I suppose that the Rules Committee would dis-
9 cuss with you a possibility of having a resolution which might
10 give us the sense of the body without affecting the substance
11 of the article. Now, there's three ways to do it -- the ballot
12 time, by resolution, by suspending the rules and starting over
13 again on the legislature, but I don't think you're going to do
14 it, Mr. Aasheim, by bringing it back to General Orders tomor-
15 row. Is there further --

16 Mrs. Bates.

17 DELEGATE BATES: Yes. I would like to ask a ques-
18 tion here that I think might clear this up to some extent.
19 When we vote on the ballot to decide, then will we be deciding
20 which will be on the top--the unicameral or the bicameral--and
21 is it possible that maybe counties will have to stagger these
22 and that some counties will let it take the same shape as can-
23 didates, and that it may not be the top in one area and --

24 CHAIRMAN GRAYBILL: You people are all presuming
25 what Style and Drafting is going to do and you cannot guess

1 because they haven't decided.

2 DELEGATE BATES: Well, Mr. Chairman, when it's can-
3 didates -- and this, of course, may be different -- but when
4 it's candidates, they must be staggered. The first one --

5 CHAIRMAN GRAYBILL: That's right, Mrs. Bates.

6 DELEGATE BATES: It isn't with this ballot, then?

7 CHAIRMAN GRAYBILL: Now, Mrs. Bates, I didn't say it
8 wasn't. I said that Style and Drafting is going to decide that
9 matter and you're going to get a chance to vote on it. Now,
10 this issue is whether or not we should adopt Mr. Aasheim's
11 substitute motion to refer this to Style and Drafting and back
12 to General Orders tomorrow.

13 Mr. Aasheim.

14 DELEGATE AASHEIM: Mr. Chairman, I'm just asking for
15 another day's time to think this matter over. That's the
16 reason I'm asking to come back on General Orders.

17 CHAIRMAN GRAYBILL: Very well, is there other dis-
18 cussion?

19 (No response)

20 CHAIRMAN GRAYBILL: All in favor of Mr. Aasheim's
21 motion say Aye.

22 DELEGATES: Aye.

23 CHAIRMAN GRAYBILL: Opposed, No.

24 DELEGATES: No.

25 CHAIRMAN GRAYBILL: The Noes have it and it is de-

1 feated. All right, now we're back on Mr. Schiltz's motion that
2 the matter be referred to Style and Drafting and then, if it's
3 all right, go directly to Order of Business Number Five. If
4 not, if there are errors, to be brought back to General Orders.
5 So many as are in favor of Mr. Schiltz's motion, please say
6 Aye.

7 DELEGATES: Aye.

8 CHAIRMAN GRAYBILL: Opposed, No.

9 DELEGATES: (No audible response)

10 CHAIRMAN GRAYBILL: It's adopted. Style and Drafting's
11 report number three is re-referred to Style and Drafting under
12 the terms of that motion.

13 Mr. Murray.

14 DELEGATE MURRAY: Mr. Chairman, I move that the com-
15 mittee consider the Style and Drafting report number four on
16 the executive at nine A.M., March 8, 1972, and consider all
17 other business on General Orders at the next sitting of the
18 committee, and the sense of my motion is to rearrange the cal-
19 endar and get on with the Bill of Rights work.

20 CHAIRMAN GRAYBILL: Mr. Murray's motion is to -- Mr.
21 Murray's motion is to pass the executive article Style and
22 Drafting report until nine o'clock tomorrow morning and start
23 now with Bill of Rights. Is there any discussion?

24 (No response)

25 CHAIRMAN GRAYBILL: All in favor of that motion say

1 Aye.

2 DELEGATES: Aye.

3 CHAIRMAN GRAYBILL: Opposed, No.

4 DELEGATES: (No audible response)

5 CHAIRMAN GRAYBILL: The Ayes have it.

6 Mr. Murray.

7 DELEGATE MURRAY: I move that the committee recess

8 until three-thirty this day.

9 CHAIRMAN GRAYBILL: A move to recess until three-

10 thirty. All in favor say Aye.

11 DELEGATES: Aye.

12 CHAIRMAN GRAYBILL: Opposed?

13 DELEGATES: (No audible response)

14 CHAIRMAN GRAYBILL: So ordered.

15

16 (Committee in recess from 3:20 P.M.

17 until 3:40 P.M.)

18 CHAIRMAN GRAYBILL: The Committee will be in session.

19 The Committee will be in session. The Chair would like to an-

20 nounce that the Chair anticipates an evening session tonight.

21 I think I may have said that before, and I anticipate that.

22 We will probably wind up about five or five-fifteen and we'll

23 probably come back in at seven-thirty or eight.

24 Mr. Murray.

25 DELEGATE MURRAY: Mr. Chairman, I move that the Com-

1 rise and finally report.

2 CHAIRMAN GRAYBILL: On the legislative Style and
3 Drafting article?

4 DELEGATE MURRAY: Yes.

5 CHAIRMAN GRAYBILL: The motion has been made to rise
6 and finally report on the legislative Style and Drafting arti-
7 cle. All in favor say Aye.

8 DELEGATES: Aye.

9 CHAIRMAN GRAYBILL: Opposed, No.

10 DELEGATES: (No audible response)

11 CHAIRMAN GRAYBILL: Very well. Will the Clerk please
12 read the title of the report?

13 CLERK HANSON: (Reading) March 7, 1972. Mr. Pres-
14 ident, we, your Committee of the Whole, having had under con-
15 sideration business under General Orders, report number three
16 of the Committee on Style and Drafting, recommend as follows:
17 That the Committee rise and finally report on the legislative
18 Style and Drafting report. Signed, Leo Graybill, chairman.

19 PRESIDENT GRAYBILL: Mr. Murray.

20 DELEGATE MURRAY: Mr. President, I move that the
21 Convention adopt the Committee of the Whole report.

22 PRESIDENT GRAYBILL: The motion has been made that
23 the Committee of the Whole report be adopted. Is there dis-
24 cussion?

25 (No response)

1 PRESIDENT GRAYBILL: All in favor say Aye.

2 DELEGATES: Aye.

3 PRESIDENT GRAYBILL: Opposed, No.

4 DELEGATES: (No audible response)

5 PRESIDENT GRAYBILL: So ordered. Mr. Murray, we'll
6 go to Order of Business Number Eleven. Are there announce-
7 ments?

8 DELEGATE MURRAY: Mr. President, Rules Committee
9 meeting at eight o'clock in the rules room. I might add, Mr.
10 President, that's eight o'clock in the morning in the rules
11 committee room.

12 PRESIDENT GRAYBILL: Rules at eight o'clock in the
13 morning. Are there other announcements?

14 (No response)

15 PRESIDENT GRAYBILL: Very well, we'll be back on
16 Order of Business Number One.

17 Mr. Murray.

18 DELEGATE MURRAY: Mr. President, I move that we ad-
19 vance to Order of Business Number Ten, General Orders.

20 PRESIDENT GRAYBILL: Order of Business Number Ten,
21 General Orders, has been moved. Is there -- it has been moved
22 that we advance to that. Is there any objection?

23 (No response)

24 PRESIDENT GRAYBILL: All in favor say Aye.

25 DELEGATES: Aye.

1 PRESIDENT GRAYBILL: Opposed?
2 DELEGATES: (No audible response)
3 PRESIDENT GRAYBILL: We are back on Order of Business
4 Number Ten.
5 Mr. Murray.
6 DELEGATE MURRAY: Mr. President, I move that the Con-
7 vention resolve itself into Committee of the Whole for consid-
8 eration of business under General Orders.
9 PRESIDENT GRAYBILL: The motion has been made to re-
10 solve this Convention into Committee of the Whole to consider
11 the Bill of Rights proposal. All in favor say Aye.
12 DELEGATES: Aye.
13 PRESIDENT GRAYBILL: Opposed, No.
14 DELEGATES: (No audible response)
15 PRESIDENT GRAYBILL: The Ayes have it and so ordered.
16
17 (Convention resolved into Committee of the Whole.)
18
19 CHAIRMAN GRAYBILL: Ladies and gentlemen of the Com-
20 mittee, we will start the Bill of Rights by having Mr. Dahood
21 make a short statement, and then we'll consider it as usual,
22 article by article -- section by section. Mr. Dahood, are
23 you prepared to make your statement now, sir?
24 DELEGATE DAHOOD: I am prepared, Mr. Chairman.
25 CHAIRMAN GRAYBILL: Very well, Mr. Dahood.

1 DELEGATE DAHOOD: Mr. Chairman, fellow Delegates,
2 Bill of Rights Committee proposal number eight is before you.
3 We hope and trust that you have examined all thirty-four sec-
4 tions, that any questions you might have with respect to those
5 sections will be presented to us. We will welcome meaningful
6 dialogue and debate. During the course of preparing the pro-
7 posal that is before you, the committee received forty-six
8 proposals, heard one hundred thirty-eight witnesses, and held
9 more than twenty committee hearings. As a result, there are
10 thirty-four sections in a proposed bill of rights for the state
11 of Montana that promises to provide the citizens of the state
12 of Montana with the finest, most expansive declaration of in-
13 dividual rights enacted by any state of the United States. The
14 proposal before you will show that there were seven votes cast
15 in opposition. With respect to the thirty-four sections, only
16 five sections received negative votes, but nevertheless, when
17 all was resolved, all eleven committee members unanimously
18 pledged their support to all thirty-four sections without dis-
19 sent. The committee members will move the various sections.
20 I have placed before the Chair the sections and opposite those
21 sections the committee members who will move those respective
22 sections, and I would like to request the Chair to recognize
23 the committee members in the order in which their names appear
24 on the list that is before the Chair, commencing with preamble
25 and committee member George James. Thank you, Mr. Chairman.

1 CHAIRMAN GRAYBILL: Very well. Mr. Clerk, will you
2 read Bill of Rights preamble article? Read the title and the
3 preamble.

4 CLERK HANSON: (Reading) Montana Constitutional Con-
5 vention, 1971-72, Bill of Rights Committee Proposal Number
6 Eight. Date reported, February 23, 1972, Wade Dahood, chair-
7 man, Chet Blaylock, vice chairman. Be it proposed by the Bill
8 of Rights Committee that there be a new article on the Bill of
9 Rights to read as follows: Preamble. We the people of Montana,
10 grateful to God for the quiet beauty of our state, the grandeur
11 of our mountains, the vastness of our rolling plains, and de-
12 siring to improve the quality of life, equality of opportunity
13 and to secure the blessings of liberty for this and future
14 generations, do ordain and establish this Constitution. (End
15 reading.) Mr. Chairman, the preamble.

16 CHAIRMAN GRAYBILL: Mr. James.

17 DELEGATE JAMES: Mr. Chairman, fellow Delegates,
18 guests, members of the staff, I think that we all took an ac-
19 tive part in the presentation of this preamble. It's not the
20 usual form sort of thing that many states have. It expresses
21 a reverence for our land, a pride in it, and it's an expres-
22 sion of a philosophy that we of the committee believe in. Mr.
23 Chairman, I move that when this committee does rise and report,
24 after having under consideration the preamble, it recommends
25 that the same be adopted.

1 CHAIRMAN GRAYBILL: Very well, you have before you
2 a motion that the preamble be adopted. Is there discussion?

3 Mr. Toole.

4 DELEGATE TOOLE: Mr. Chairman, I think that the
5 authors of this preamble are to be congratulated. I think that
6 it represents the use of the English language at its very best,
7 yet it is different, so far as I can determine, from any other
8 state constitution. I think it deserves -- they deserve great
9 credit for the beauty of the terminology and I support it and
10 hope that -- hope for its adoption.

11 CHAIRMAN GRAYBILL: Is there other discussion?

12 (No response)

13 CHAIRMAN GRAYBILL: Very well, members of the com-
14 mittee, you have before you for your consideration, upon the
15 motion of Mr. James, that when this committee does arise and
16 report, after having had under consideration the preamble to
17 the Bill of Rights article, the preamble to the Constitution,
18 that this committee recommend the same be adopted. So many as
19 shall be in favor of that motion say Aye.

20 DELEGATES: Aye.

21 CHAIRMAN GRAYBILL: Opposed, No.

22 DELEGATES: (No audible response)

23 CHAIRMAN GRAYBILL: It is adopted. Mr. Clerk, please
24 read section one of the Bill of Rights article.

25 CLERK HANSON: (Reading) Declaration of Rights.

1 Section One, Popular Sovereignty: All political power is vest-
2 ed in and derived from the people. All government of right
3 originates with the people, is founded upon their will only,
4 and is instituted solely for the good of the whole. (End read-
5 ing) Mr. Chairman, section one.

6 CHAIRMAN GRAYBILL: Mr. Blaylock.

7 DELEGATE BLAYLOCK: Mr. Chairman, I move that when
8 this committee does arise and report, after having had under
9 consideration section one of proposal number eight, it recom-
10 mend the same be adopted.

11 Mr. President.

12 CHAIRMAN GRAYBILL: Mr. Blaylock.

13 DELEGATE BLAYLOCK: Mr. President, this reads exactly
14 the same as section one of the 1889 Constitution. We had con-
15 sidered shortening the language; in fact, we had tried it out
16 and the committee discussed this for some period of time, and
17 we had some expression from some people who had come before our
18 committee that they liked the language as it was, they liked
19 the sound of the language, and so by a final -- the vote of
20 the committee, we decided to leave it just as it is in the
21 1889 Constitution to be put into our new Constitution.

22 CHAIRMAN GRAYBILL: Is there any discussion of sec-
23 tion one?

24 (No response)

25 CHAIRMAN GRAYBILL: Members of the committee, you

1 have before you for your consideration, upon the motion of Mr.
2 Blaylock, that when this committee does arise and report, after
3 having had under consideration section one of the Bill of
4 Rights article, that this committee recommend the same be ad-
5 opted. So many as shall be in favor of that motion say Aye.

6 DELEGATES: Aye.

7 CHAIRMAN GRAYBILL: Opposed?

8 DELEGATES: (No audible response)

9 CHAIRMAN GRAYBILL: It is adopted. Will the Clerk
10 read section two?

11 CLERK HANSON: (Reading) Section two - Self Govern-
12 ment: The people of the state have the exclusive right of
13 governing themselves as a free, sovereign, and independent
14 state. They may alter or abolish their constitution and form
15 of government whenever they may deem it necessary. (End read-
16 ing.) Mr. Chairman, section two.

17 CHAIRMAN GRAYBILL: Mr. Blaylock.

18 DELEGATE BLAYLOCK: Mr. Chairman, I move that when
19 this committee does arise and report, after having had under
20 consideration section two of proposal eight, it recommend that
21 the same be adopted.

22 Mr. President.

23 CHAIRMAN GRAYBILL: Mr. Blaylock.

24 DELEGATE BLAYLOCK: Mr. President, we have changed
25 this one so far as the language. We have straightened it out

1 some to make it read a little more simply. For instance, in
2 the old Constitution, right after have the on line twenty-one,
3 we struck the words, so and, because we felt it means the same
4 as exclusive, so we struck those two words. And, then, we took
5 out the sentence -- we say there they may alter or abolish their
6 constitution and form of government whenever they may deem it
7 necessary, and we have stricken from this language, provided
8 such change be not repugnant to the Constitution of the United
9 States. We felt that that language was not necessary in this,
10 that this is simply a declaration of our rights as citizens of
11 this state.

12 CHAIRMAN GRAYBILL: Is there any discussion of sec-
13 tion two?

14 (No response)

15 CHAIRMAN GRAYBILL: Members of the committee, you
16 have before you for your consideration, upon the recommendation
17 of Mr. Blaylock, that when this committee does arise and report,
18 after having had under consideration section two of the Bill
19 of Rights article that we recommend the same be adopted. So
20 many as shall be in favor of that motion say Aye.

21 DELEGATES: Aye.

22 CHAIRMAN GRAYBILL: Opposed, No.

23 DELEGATES: (No audible response)

24 CHAIRMAN GRAYBILL: Section two is adopted. Section
25 three -- please read, Mr. Clerk.

1 CLERK HANSON: Mr. Chairman. (Reading) Section
2 three - Inalienable Rights: All persons are born free and have
3 certain inalienable rights which include the right of pursuing
4 life's basic necessities, of enjoying and defending their lives
5 and liberties, of acquiring, possessing and protecting property
6 and of seeking their safety, health and happiness in all lawful
7 ways. In enjoying these rights, the people recognize corres-
8 ponding responsibilities. (End reading) Mr. Chairman, section
9 three.

10 CHAIRMAN GRAYBILL: Mr. Monroe.

11 DELEGATE MONROE: Mr. Chairman, I move that when this
12 committee does arise and report, after having had under consid-
13 eration section three of proposal number eight, it recommends
14 that the same be adopted.

15 Mr. Chairman.

16 CHAIRMAN GRAYBILL: Mr. Monroe.

17 DELEGATE MONROE: In the inalienable rights section
18 we have basically kept it the same as the inalienable rights
19 section in our present Constitution, except for some minor
20 changes. If you will turn to page fifteen in our committee
21 proposal, you can read along with me. The committee proposes,
22 with two dissenting votes, that the former article three, sec-
23 tion three be retained with few substantive changes. The com-
24 mittee struck language which was felt to be redundant. In ad-
25 dition, it is recommended that the right to pursue life's basic

1 necessities be incorporated as a statement of principle. The
2 intent of the committee on this point is not to create a sub-
3 stantive right for all for the necessities of life to be pro-
4 vided by the public treasury. The committee heard considerable
5 testimony from low income people and social service people
6 alike that the state's current public assistance program -- that
7 the current state public assistance programs are not meeting
8 the genuine needs of low income people who, because of circum-
9 stances beyond their control, are unable to obtain basic nec-
10 essities. Accordingly, it is hoped that the legislature will
11 have occasion to review these programs and upgrade them where
12 necessary to provide full necessities to those who, in genuine
13 need -- in genuine need and to curb whatever abuses may exist
14 in the programs. What was attempted in this part of the por-
15 tion -- the proposed section was a statement of principle that
16 all persons have inalienable right to pursue the basic neces-
17 sities of life, that there can be no right to life apart from
18 the possibility of existence. Other inalienable rights were
19 indicated with only minor changes in style for purposes of
20 clarity. In addition, an additional right, the right of seek-
21 ing health was incorporated in recognition of the fact that a
22 right to life without health is a very sorry proposition. The
23 final sentence of this section is having been derived from
24 delegate proposal number one sixteen. Testimony was received
25 both favoring and opposing the inclusion of this statement of

1 corresponding responsibilities in the declaration of rights.
2 Some expressed the feeling that many were accepting rights
3 without recognizing that they create obligations. Others were
4 adamant that a declaration of rights should contain just that--
5 the right of persons against governmental abuses and the rights
6 of minorities against the power of unchecked majorities. The
7 committee felt that the inclusion of such a statement does not
8 infringe or impair the rights granted in the declaration of
9 rights but only accords a tone of responsibility in their ex-
10 ercise. In regard to basic necessities, we had about seventeen
11 people come before our committee. Many of them were of low
12 income status economically and we had social service workers,
13 and it was our opinion that such a statement in the bill of
14 rights as stated here does not suggest that the state pay out
15 of the public treasury for those basic necessities, such as
16 housing, medical care and nourishment, but that this is more
17 or less of a constitutional sermon so that maybe the legisla-
18 ture from time to time can improve and update, update and up-
19 grade our public assistance programs from time to time as they
20 see fit. Of course, the right to health was incorporated in
21 the last sentence and the second to the last sentence of our
22 inalienable rights section. I didn't look it up in the dic-
23 tionary, but an inalienable right is something in my estima-
24 tion that comes to each one of us just because we're here and
25 we're human beings. Even if there was no such thing as a gov-



1 ernment, all of us would have these rights. I will stop at
2 this point and if there is any comments, you can hear them,
3 and I move that we adopt this section. Thank you.

4 CHAIRMAN GRAYBILL: Is there further debate?
5 Mr. Kelleher.

6 DELEGATE KELLEHER: (No audible response.)

7 CHAIRMAN GRAYBILL: No?
8 Mr. Burkhardt.

9 DELEGATE BURKHARDT: I believe that you have, Mr.
10 Chairman, a copy of an amendment for this section that does not
11 delete anything. It's the addition of eight words, and I won-
12 der if the Clerk could read it.

13 CHAIRMAN GRAYBILL: Will the Clerk please read Mr.
14 Burkhardt's amendment?

15 CLERK HANSON: (Reading) Mr. Chairman, I move to
16 amend section three, Bill of Rights Committee proposal, on page
17 four, line twenty-six, by inserting after the word, include,
18 the following words: (quote) the right to a clean and health-
19 ful environment, comma (end quote). Signed, Burkhardt.

20 DELEGATE BURKHARDT: Mr. Chairman.

21 CHAIRMAN GRAYBILL: Just a moment. Mr. Burkhardt
22 wishes to make an amendment on line twenty-six, after the word,
23 include, right at the end of the line -- which include -- and
24 he wants to add the words, the right to a clean and healthful
25 environment, before the phrase, the right of pursuing life's

1 basic necessities, et cetera. Mr. Burkhardt, your amendment
2 is allowed. Go ahead and discuss it.

3 DELEGATE BURKHARDT: Mr. Chairman, this is a state-
4 ment that we, as a body, have already adopted in another sec-
5 tion of our Constitution in our natural resources section. We
6 have the statement: It shall be the duty of the state of Mon-
7 tana and each person to maintain and improve a clean and health-
8 ful environment. And it seems to me that it is simply strik-
9 ing the other side of the balance to put it here in our bill
10 of rights to recognize that this is, for the time in which we
11 are living and for the foreseeable future, one of the inalien-
12 able rights that we hope to assure for our posterity. I don't
13 care to belabor the issue. It seems to me it's self-evident.
14 I would reserve the right to close if there is debate on the
15 issue.

16 CHAIRMAN GRAYBILL: Mr. Dahood.

17 DELEGATE DAHOOD: Mr. Chairman, I would ask Mr. Burk-
18 hardt if he would yield to a question.

19 DELEGATE BURKHARDT: I will.

20 DELEGATE DAHOOD: Delegate Burkhardt, I would like
21 to inquire on behalf of our committee, if, by this proposed
22 amendment it is your intention to provide the citizens of the
23 state of Montana with the independent right to initiate a law
24 suit when is own health and his own property is not affected
25 within the contemplation of the present law?

1 DELEGATE BURKHARDT: Mr. Dahood, you have much ex-
2 perience as a trial lawyer and I may be somewhat at a disad-
3 vantage in handling the question, but I will try to answer it
4 as I understand it. I read the preamble to this section on
5 the bill of rights and believed it. I think it's a beautiful
6 statement and it seems to me that what I am proposing here is
7 in concert with what is proposed in that preamble; that what
8 we are talking about here is the goal toward which we try to
9 grow as a society. I do not see it as an overt attempt to
10 slip in with the opportunity to sue.

11 DELEGATE DAHOOD: Very fine. Thank you very much.
12 Mr. Chairman, I certainly want to comment that, with respect
13 to the basic concept itself, it is a concept with which no one
14 can disagree in my judgment, but I would certainly like to hear
15 from some of the other Delegates with respect to the proposed
16 amendment. Thank you, Mr. Chairman.

17 CHAIRMAN GRAYBILL: Is there further discussion?
18 Mrs. Eck.

19 DELEGATE ECK: Our Bill of Rights Committee discussed
20 environmental issues at some length and decided that we really
21 shouldn't include a section on environmental bill of rights,
22 which I think a great many of us had expected to do, since this
23 would be covered by the Natural Resources Committee. We did
24 submit a statement to the Natural Resources Committee which in-
25 cluded, I think, a slightly stronger statement than what we

1 have included here. We also concurred pretty much with the
2 statement that they came up with, especially their statement
3 with what the duty of the state is with regard to maintaining
4 a clean environment, a healthful environment, a high quality
5 environment--whatever you want to call it. It is my under-
6 standing that they quite purposely did not include a statement
7 of each individual's rights, believing that this kind of a
8 statement really fitted better into the bill of rights. We
9 could include a separate statement on it but I think that with
10 what has gone before, it's not really necessary, and I certain-
11 ly do concur in Mr. Burkhardt's amendment here as being quite
12 appropriate to what the intention of it was in our committee
13 and I think also the intention of the Natural Resources Com-
14 mittee. Thank you.

15 CHAIRMAN GRAYBILL: Is there further discussion?
16 Mr. Toole.

17 DELEGATE TOOLE: Mr. Chairman, would Mr. McNeil
18 yield to a question on this subject?

19 CHAIRMAN GRAYBILL: Mr. McNeil?

20 DELEGATE McNEIL: I yield.

21 DELEGATE TOOLE: Mr. McNeil, do you think this tends
22 to reinforce your article in Natural Resources, or how do you
23 regard putting this in, in light of what your own committee
24 did?

25 DELEGATE McNEIL: I can't speak for the committee.

1 I can only speak as an individual. I introduced a delegate
2 proposal which would have given each individual the right to a
3 quality environment. I have already spoken on this clean and
4 healthful. I'm afraid that that isn't as strong as we really
5 want, but if that's the will of the Convention and as strong as
6 they think they can pass, why, I would agree with it.

7 CHAIRMAN GRAYBILL: Mr. Dahood.

8 DELEGATE DAHOOD: Well, Mr. Chairman, I would want
9 the minutes and the record of this Convention to show that this
10 amendment does not have as one of its purposes an attempt to
11 circumvent the votes that were taken with respect to the Nat-
12 ural Resources motions that attempted to put in theories with
13 respect to the environment that were rejected by a majority of
14 these Constitutional Delegates, and I trust that this is not
15 the intention of the mover of the amendment, and if that be
16 correct, then I would have no objection to the amendment.

17 CHAIRMAN GRAYBILL: Mr. Burkhardt, do you care to re-
18 spond?

19 DELEGATE BURKHARDT: Am I closing or just respond-
20 ing, or what?

21 CHAIRMAN GRAYBILL: Well, you're probably closing
22 since I don't see anyone else up.

23 DELEGATE BURKHARDT: The way I figure it, Bob Kel-
24 leher owes all of us an hour and a half and one of these days
25 I'm going to take it, but not now. Just that I think that run-

1 ning through all of us is a concern to provide for future years
2 and I think that industry joins us in this concern. They are,
3 after all, human beings whose children must grow up in our
4 country and already our major industries are on record in the
5 direction and beyond what we are stating here. So, I would say
6 that I did not vote the other day for the public trust concept
7 because I felt it had been an emotional, a distorted issue,
8 and that it would be misunderstood, and it seems to me that
9 we are providing here though a clear intent. It does present
10 the right of every person and we have already talked about the
11 duties of persons and it's nice to balance it with this right.
12 I close with that.

13 CHAIRMAN GRAYBILL: Very well, the issue arises on
14 Mr. Burkhardt's motion to add the terms -- the words, the
15 right to a clean and healthful environment, on line twenty-
16 six, page four, of the Bill of Rights article, section three.
17 So many --

18 DELEGATE KAMHOOT: Roll call.

19 CHAIRMAN GRAYBILL: Mr. Kamhoot wants a roll call
20 vote. So many as are in favor of Mr. Burkhardt's amendment
21 vote Aye. So many as are opposed vote No. Have all the
22 Delegates voted?

23 (No response)

24 CHAIRMAN GRAYBILL: Does any Delegate wish to change
25 his vote?

1

(No response)

2

CHAIRMAN GRAYBILL: Please take the ballot.

3	Aasheim	-	Aye	Cate	-	Aye
4	Anderson, J.	-	Aye	Champoux	-	Aye
5	Anderson, O.	-	Aye	Choate	-	Aye
6	Arbanas	-	Aye	Conover	-	Aye
7	Arness	-	Absent	Cross	-	Aye
8	Aronow	-	Aye	Dahood	-	Aye
9	Artz	-	Aye	Davis	-	Aye
10	Ask	-	Aye	Delaney	-	Aye
11	Babcock	-	Aye	Driscoll	-	Aye
12	Barnard	-	Aye	Drum	-	Absent
13	Bates	-	Absent	Eck	-	Aye
14	Belcher	-	Excused	Erdmann	-	Aye
15	Berg	-	Aye	Eskildsen	-	Excused
16	Berthelson	-	Aye	Etchart	-	Aye
17	Blaylock	-	Aye	Felt	-	Aye
18	Blend	-	Aye	Foster	-	Aye
19	Bowman	-	Aye	Furlong	-	Absent
20	Brazier	-	Aye	Garlington	-	Aye
21	Brown	-	Aye	Gysler	-	Nay
22	Bugbee	-	Aye	Habedank	-	Nay
23	Burkhardt	-	Aye	Hanson, R. S.	-	Aye
24	Cain	-	Absent	Hanson, R.	-	Aye
25	Campbell	-	Aye	Harbaugh	-	Aye

1	Harlow	-	Absent	Nutting	-	Excused
2	Harper	-	Aye	Payne	-	Aye
3	Harrington	-	Aye	Pemberton	-	Nay
4	Heliker	-	Aye	Rebal	-	Aye
5	Holland	-	Absent	Reichert	-	Aye
6	Jacobsen	-	Aye	Robinson	-	Aye
7	James	-	Absent	Roeder	-	Aye
8	Johnson	-	Nay	Rollins	-	Aye
9	Joyce	-	Aye	Romney	-	Aye
10	Kamhoot	-	Nay	Rygg	-	Aye
11	Kelleher	-	Aye	Scanlin	-	Absent
12	Leuthold	-	Aye	Schiltz	-	Aye
13	Loendorf	-	Aye	Siderius	-	Aye
14	Lorello	-	Aye	Simon	-	Aye
15	Mahoney	-	Absent	Skari	-	Aye
16	Mansfield	-	Aye	Sparks	-	Aye
17	Martin	-	Aye	Speer	-	Aye
18	McCarvel	-	Nay	Studer	-	Aye
19	McDonough	-	Nay	Sullivan	-	Aye
20	McKeon	-	Aye	Swanberg	-	Aye
21	McNeil	-	Aye	Toole	-	Aye
22	Melvin	-	Aye	Van Buskirk	-	Aye
23	Monroe	-	Aye	Vermillion	-	Aye
24	Murray	-	Aye	Wagner	-	Aye
25	Noble	-	Aye	Ward	-	Aye

1 Warden - Absent Woodmansey - Aye
2 Wilson - Aye Mr. Chairman - Aye

3 CLERK HANSON: Mr. Chairman, seventy-nine Delegates
4 voting Aye, seven voting No.

5 CHAIRMAN GRAYBILL: Seventy-nine Delegates having
6 voted Aye and seven No, the amendment to add that phrase to
7 section three passes, or is adopted. Is there any other dis-
8 cussion of section three?

9 Mr. Kelleher.

10 DELEGATE KELLEHER: Mr. Chairman, I move to substi-
11 tute the word, conceived, for the word, born, on line twenty-
12 five.

13 Mr. Chairman.

14 CHAIRMAN GRAYBILL: Just a minute, Mr. Kelleher.
15 Since you didn't send that up, I have to write it out here.

16 DELEGATE KELLEHER: C-o-n-c-e-i-v-e-d.

17 CHAIRMAN GRAYBILL: B-o-r-n?

18 (Laughter)

19 CHAIRMAN GRAYBILL: Yes, Mr. Kelleher. Mr. Kelleher
20 makes a motion to amend line twenty-five by striking the word,
21 born, and putting in the word, conceived.

22 DELEGATE KELLEHER: Mr. Chairman.

23 CHAIRMAN GRAYBILL: Mr. Kelleher.

24 DELEGATE KELLEHER: My purpose in this is, what's
25 the use of having the rights of the living if I don't have the

1 right to be born. A most defenseless human being in the world
2 is the human fetus, which is dependent upon its own mother for
3 protection and, lastly, I would leave to the courts the meaning
4 of when a, quote, person, close quote, is used in line twenty-
5 five is conceived.

6 CHAIRMAN GRAYBILL: Mr. Dahood.

7 DELEGATE DAHOOD: Mr. Chairman, I stand in opposi-
8 tion to the amendment. What Delegate Kelleher is attempting
9 to do at this time is by constitutional command prohibit
10 abortion in the state of Montana. That issue was brought be-
11 fore the committee. We decided we should not deal with it
12 within the bill of rights. It is a legislative matter insofar
13 as we are concerned. The world of law has for centuries con-
14 ducted a debate as to when a person becomes a person, at what
15 particular state, at what particular time, and we submit that
16 this particular question should not be decided by this dele-
17 gation. It has no part at this time within the bill of rights
18 of the Constitution of the state of Montana, and we oppose
19 it for that reason.

20 CHAIRMAN GRAYBILL: Very well, Mr. Kelleher, you may
21 close.

22 DELEGATE KELLEHER: May I have five seconds, please,
23 for a roll call vote?

24 CHAIRMAN GRAYBILL: All right, we'll have a roll
25 call vote. The question now arises on Mr. Kelleher's amend-

1 ment to substitute the word, conceived, for the word, vote --
2 or the word, born, so that the first sentence would read: All
3 persons are conceived free and have certain inalienable rights.
4 As many as shall be in favor of Mr. Kelleher's motion, vote
5 Aye, and so many as shall be opposed, vote No. Has every Del-
6 egate voted?

7 (No response)

8 CHAIRMAN GRAYBILL: Does any Delegate wish to change
9 his vote?

10 (No response)

11 CHAIRMAN GRAYBILL: Please take the ballot.

12	Aasheim	-	Nay	Blaylock	-	Nay
13	Anderson, J.	-	Nay	Blend	-	Nay
14	Anderson, O.	-	Nay	Bowman	-	Nay
15	Arbanas	-	Absent	Brazier	-	Nay
16	Arness	-	Absent	Brown	-	Nay
17	Aronow	-	Nay	Bugbee	-	Nay
18	Artz	-	Aye	Burkhardt	-	Nay
19	Ask	-	Nay	Cain	-	Absent
20	Babcock	-	Nay	Campbell	-	Nay
21	Barnard	-	Nay	Cate	-	Aye
22	Bates	-	Absent	Champoux	-	Nay
23	Belcher	-	Excused	Choate	-	Nay
24	Berg	-	Nay	Conover	-	Nay
25	Berthelson	-	Nay	Cross	-	Aye

1	Dahood	-	Nay	Johnson	-	Nay
2	Davis	-	Nay	Joyce	-	Aye
3	Delaney	-	Nay	Kamhoot	-	Nay
4	Driscoll	-	Aye	Kelleher	-	Aye
5	Drum	-	Absent	Leuthold	-	Nay
6	Eck	-	Nay	Loendorf	-	Nay
7	Erdmann	-	Nay	Lorello	-	Nay
8	Eskildsen	-	Excused	Mahoney	-	Nay
9	Etchart	-	Aye	Mansfield	-	Aye
10	Felt	-	Nay	Martin	-	Nay
11	Foster	-	Nay	McCarvel	-	Nay
12	Furlong	-	Nay	McDonough	-	Nay
13	Garlington	-	Nay	McKeon	-	Absent
14	Gysler	-	Nay	McNeil	-	Aye
15	Habedank	-	Nay	Melvin	-	Nay
16	Hanson, R. S.	-	Nay	Monroe	-	Aye
17	Hanson, R.	-	Nay	Murray	-	Nay
18	Harbaugh	-	Nay	Noble	-	Nay
19	Harlow	-	Absent	Nutting	-	Excused
20	Harper	-	Nay	Payne	-	Nay
21	Harrington	-	Aye	Pemberton	-	Nay
22	Heliker	-	Nay	Rebal	-	Nay
23	Holland	-	Nay	Reichert	-	Nay
24	Jacobsen	-	Nay	Robinson	-	Nay
25	James	-	Absent	Roeder	-	Aye

1	Rollins	-	Nay	Sullivan	-	Nay
2	Romney	-	Nay	Swanberg	-	Nay
3	Rygg	-	Nay	Toole	-	Nay
4	Scanlin	-	Absent	Van Buskirk	-	Aye
5	Schiltz	-	Aye	Vermillion	-	Nay
6	Siderius	-	Nay	Wagner	-	Absent
7	Simon	-	Nay	Ward	-	Nay
8	Skari	-	Absent	Warden	-	Nay
9	Sparks	-	Nay	Wilson	-	Nay
10	Speer	-	Nay	Woodmansey	-	Nay
11	Studer	-	Aye	Mr. Chairman	-	Nay

12 CLERK HANSON: Mr. Chairman, fifteen Delegates voting
13 Aye, seventy-one voting No.

14 CHAIRMAN GRAYBILL: Seventy-one having voted No and
15 fifteen Delegates having voted Aye, Mr. Kelleher's motion
16 fails. Is there other discussion of section three?

17 (No response)

18 CHAIRMAN GRAYBILL: Very well, members of the com-
19 mittee, you have before you, on the recommendation of Mr.
20 Monroe, that when this committee does rise and report, after
21 having had under consideration section three, that it recom-
22 mend the same be adopted as amended. So many as shall be in
23 favor of that motion say Aye.

24 DELEGATES: Aye.

25 CHAIRMAN GRAYBILL: Opposed, No.

1 DELEGATES: (No audible response)

2 CHAIRMAN GRAYBILL: Section three is adopted. Mr.
3 Clerk, will you please read section four?

4 CLERK HANSON: (Reading) Section four, Individual
5 Dignity: The dignity of the human being is inviolable. No
6 person shall be denied the equal protection of the law, nor
7 be discriminated against in the exercise of his civil or pol-
8 itical rights on account of race, color, sex, culture, social
9 origin or condition, or political or religious ideas, by any
10 person, firm, corporation or institution, or by the state, its
11 agencies or subdivisions. (End reading) Mr. Chairman, section
12 four.

13 CHAIRMAN GRAYBILL: Very well, Mrs. Mansfield.

14 DELEGATE MANSFIELD: Mr. Chairman, I move that when
15 this committee does rise and report, after having had under
16 consideration section four of the bill of rights, it recommends
17 it be adopted.

18 Mr. Chairman.

19 CHAIRMAN GRAYBILL: Mrs. Mansfield.

20 DELEGATE MANSFIELD: The committee unanimously adopt-
21 ed this section with the intent of providing a constitutional
22 impetus for the eradication of public and private discrimina-
23 tions based on race, color, sex, culture, social origin or con-
24 dition, or political or religious ideas. The provision, quite
25 similar to that of the Puerto Rico declaration of rights, is

1 aimed at prohibiting private as well as public discrimination
2 in civil and political rights. Considerable testimony was
3 heard concerning the need to include sex in any equal protection
4 or freedom from discrimination provisions. The committee felt
5 that such inclusion was eminently proper and saw no reason for
6 the state to wait for the adoption of the federal equal rights
7 amendment, or any amendment which would not explicitly provide
8 as much protection as this provision. The word culture was
9 incorporated specifically to cover groups whose cultural base
10 is distinct from mainstream Montana, especially the American
11 Indians. Social origin or condition was included to cover dis-
12 criminations based on status of income and standard of living.
13 Some fears were expressed that the wording, political or relig-
14 ious ideas, would permit persons who supported the right to
15 work in principle to avoid union membership. Such is not the
16 intent of the committee. The wording was incorporated to pro-
17 hibit public and private concerns discriminating against per-
18 sons because of their political or religious beliefs. The
19 wording of this section was derived almost verbatim from the
20 delegate proposal number sixty-one. The committee felt that
21 this proposal incorporated all features of all the delegate
22 proposals, numbers ten, thirty-two, fifty and fifty-one, on
23 the subjects of equal protection of the laws and the freedom
24 from discrimination. The committee is well aware that any
25 broad proposal on these subjects will require considerable

1 statutory embellishment. It is hoped that the legislature will
2 enact statutes to promote effective eradication of the discrim-
3 inations prohibited in this section. The considerable support
4 for and lack of opposition to this provision indicates its
5 import and advisability. Mr. Chairman, I move that when this
6 committee does rise and report, after having had this under
7 consideration, section four of the bill of rights, that it
8 recommends its adoption. Thank you, Mr. President.

9 CHAIRMAN GRAYBILL: Very well, is there discussion
10 of section four?

11 Mr. Habedank.

12 DELEGATE HABEDANK: Mr. Chairman, I move to delete
13 from section four, on line eight, the words at the end of the
14 line, by any person; and on line nine the words, firm, corp-
15 oration or institution or.

16 CHAIRMAN GRAYBILL: Line eight and nine. Very well,
17 Mr. Habedank moves to delete on lines eight and nine of sec-
18 tion four the phrase, by any person, firm, corporation or
19 institution, semi-colon, or--so that the last part of the sen-
20 tence would read: nor be discriminated against in the exer-
21 cise of his civil or political rights on account of race,
22 color, sex, culture, social origin or condition, or political
23 or religious ideas by the state, its agencies or subdivisions,
24 the upshot of this being to take out discrimination by persons,
25 firms or corporations from the protection of the bill of rights.

1 Mr. Habedank.

2 DELEGATE HABEDANK: Mr. President, it is my opinion
3 that the words, by any person, firm or corporation or institu-
4 tion, can be opening a lot of challenges to the rights of
5 other people, to privacy, to things which we have considered
6 dear. I happen to be a very -- partly Scandinavian. I belong
7 to an organization called the Sons of Norway. They exclude
8 people who aren't Norwegians, although you can go a long ways
9 in finding out who -- if you have some Norwegian blood in you.
10 But, the point I'm trying to make is that I feel that this
11 amendment, as it is written, can be construed to prohibit or-
12 ganizations which are incorporated from limiting their member-
13 ship. It can cause me, as an individual, to have to associate
14 with people that I choose not to associate with and I think
15 that the federal Constitution, as it is being interpreted by
16 the United States Supreme Court at the present time, carries
17 this matter far enough and I am therefore moving the deletion
18 of these words.

19 CHAIRMAN GRAYBILL: Is there discussion?

20 Mr. Dahood.

21 DELEGATE DAHOOD: Mr. Chairman, I can appreciate
22 Delegate Habedank's concern because I think that concerns us
23 all, but that is not the intent of section four with respect
24 to individual dignity. We must keep in mind that we have a
25 federal civil rights act of 1964 which encompasses some of

1 these fears that have been expressed by the gentleman Delegate
2 who has moved the amendment to strike that particular phrase-
3 ology. There is no intent within this particular section to
4 do anything other than to remove the apparent type of discrim-
5 ination that all of us object to with respect to employment, to
6 rental practices, to actual association in matters that are
7 public or matters that tend to be somewhat quasi-public. With
8 respect to a religious organization, with respect perhaps to
9 the Sons of Norway or the Sons of Scandinavia, of course there
10 would necessarily be qualifications that an individual would
11 have to meet before he would be admitted to membership. That
12 type of private organization is certainly not within the in-
13 tendment of the committee in submitting section four. The in-
14 tent of section four is simply to provide that every individ-
15 ual in the state of Montana, as a citizen of this state, may
16 pursue his inalienable rights without having any shadows cast
17 upon his dignity through unwarranted discrimination, and we
18 submit that the concern of this date and of this Convention
19 with respect to discrimination should not be reflected simply
20 by having limitations upon the state and its agencies, but
21 also by having those same limitations upon the private agen-
22 cies that live within the society of the state of Montana. I
23 oppose the amendment.

24 CHAIRMAN GRAYBILL: Mr. Blaylock.

25 DELEGATE BLAYLOCK: Mr. Chairman, I also oppose the

1 amendment. I believe that -- I don't think that we can logi-
2 cally say that we'll just leave it to the state and so many of
3 these that are going to be -- that would be stricken if this
4 amendment were to pass are the very firms that are hiring many
5 people and where we are concerned as Montana citizens where
6 discrimination may take place, so I do oppose the amendment.

7 CHAIRMAN GRAYBILL: Mr. Loendorf.

8 DELEGATE LOENDORF: Would Mr. Dahood yield, please?

9 CHAIRMAN GRAYBILL: Mr. Dahood, would you yield to
10 a question?

11 DELEGATE DAHOOD: Mr. Chairman, I yield.

12 DELEGATE LOENDORF: Mr. Dahood, correct me if I'm
13 wrong, but it's my understanding that under the federal equal
14 protection of the laws clause, which is the same as you have
15 here, that everything you have after equal protection of the
16 law would really be subsumed in that first provision and every-
17 thing you've said after that would really be unnecessary, al-
18 though I have no objection to it. It would go without saying,
19 is that correct?

20 DELEGATE DAHOOD: No person shall be denied the equal
21 protection of the law.

22 DELEGATE LOENDORF: Right. If you put a period there
23 the meaning would be the same.

24 DELEGATE DAHOOD: But, I think that when we're deal-
25 ing with this type of right, Delegate Loendorf, we are dealing

1 with something that is this basic. To an orderly and progres-
2 sive society perhaps sometimes the sermon that can be given
3 by constitution, as well as the right, becomes necessary and
4 I think it takes that type of language to convey the intent of
5 this committee. Thank you for the question.

6 CHAIRMAN GRAYBILL: Mr. Holland.

7 DELEGATE HOLLAND: Will Mr. Dahood yield to a ques-
8 tion?

9 CHAIRMAN GRAYBILL: Mr. Dahood?

10 DELEGATE DAHOOD: Mr. Chairman, I yield.

11 DELEGATE HOLLAND: Mr. Dahood, I'm a little bit like
12 Mr. Habedank. I understand that we don't want discrimination
13 in employment and things like that, but can the intent of this
14 be that, for instance, that all of the ladies can be -- can
15 join the Elks or the Masons or the strictly men's organizations?
16 I mean, you say any corporation or any person or any corpora-
17 tion -- I presume many would apply to that -- or any institu-
18 tion. There are several lady organizations, several male or-
19 ganizations, all of which are thereby --

20 DELEGATE DAHOOD: Mr. Holland, in answer to your
21 question, no, that is not our intent. There are certain re-
22 quirements, certain qualifications, certain matters, I suppose,
23 that might fall within the term of legitimate discrimination
24 that are not covered by this particular section. Anything that
25 falls within the realm of common sense -- I think you have in-

1 dicated situations where common sense would have to indicate
2 that the qualifications that would be set for membership are
3 proper and in those circumstances I would not expect section
4 four to have any effect. Thank you, Mr. Holland.

5 CHAIRMAN GRAYBILL: Mr. Harper.

6 DELEGATE HARPER: Would Mr. Dahood yield to another
7 question?

8 DELEGATE DAHOOD: I yield, Mr. Chairman.

9 DELEGATE HARPER: I think we see what Mr. Habedank
10 is getting at. This says that no person shall be denied the
11 equal protection of the law. That's clear. Then it continues,
12 nor be discriminated against--and this is the phrase--in the
13 exercise of his civil or political rights. Now, is that --
14 does that, in your interpretation, rule out things like girls
15 joining the YMCA and so forth? Aren't civil rights things that
16 the legislature has to deal with?

17 DELEGATE DAHOOD: Basically, Delegate Harper, that
18 is correct and I do not think that at this time in America we
19 have an all-inclusive definition of civil rights. Thank you
20 for the question.

21 CHAIRMAN GRAYBILL: Is there further discussion of
22 section four?

23 Mrs. Eck.

24 DELEGATE ECK: Mr. Chairman, I would also like to
25 point out the fact that this does include protection from re-

1 religious discrimination which previously had been in the relig-
2 ious -- in the section on freedom of religion and it is covered
3 here and it is not covered again there.

4 CHAIRMAN GRAYBILL: Mrs. Robinson.

5 DELEGATE ROBINSON: Will Mr. Dahood yield to a ques-
6 tion, please?

7 CHAIRMAN GRAYBILL: Mr. Dahood?

8 DELEGATE DAHOOD: I yield, Mr. Chairman.

9 DELEGATE ROBINSON: Mr. Dahood, I am concerned about
10 this proposal because of some information that was received
11 that it might be a non-self-executing provision as you have it
12 written, and that's why, in my proposal, I followed what Illi-
13 nois did and provided that this would be a self-executing pro-
14 vision. There is some concern that as you have it written now
15 it would take complete legislative implementation to make it
16 effective. Is that true?

17 DELEGATE DAHOOD: Delegate Robinson, I think the
18 question is sound but I must answer by saying that in my judg-
19 ment that is not true for these reasons. I think the Illinois
20 section, if memory serves correct, added a paragraph to indi-
21 cate that the legislature would set guidelines for the enforce-
22 ment of that particular right. In any event, constitutions are
23 based on the premise that they are presumed to be self-executing
24 particularly within the bill of rights. If the language ap-
25 pears to be prohibitory and mandatory, as this particular sec-

1 tion is intended to be, then in that event, the courts inter-
2 preting the particular section are bound by that particular pre-
3 sumption and they must assume in that situation that it is
4 self-executing. There was a case in Montana some sixty years
5 ago that involved a provision of our bill of rights that had to
6 do with an individual right, and there the supreme court said
7 that was self-executing and a citizen could enforce it without
8 any type of legislative implementation. Does that answer your
9 question?

10 DELEGATE ROBINSON: Yes. Mr. President.

11 CHAIRMAN GRAYBILL: Mrs. Robinson.

12 DELEGATE ROBINSON: Will Mr. Dahood yield to one more
13 question?

14 DELEGATE DAHOOD: Mr. Dahood will yield to one more
15 question.

16 DELEGATE ROBINSON: If section three, then, is self-
17 executing where we are stating a right against discrimination,
18 why would not -- section four, rather -- why would not section
19 three where we included the right to a clean and healthful
20 environment -- what I -- you know, it seems to me that your
21 concern in adding this thing in subsection three was perhaps
22 it is not a self-executing thing and then in four, perhaps it
23 is. I -- it seems that for -- in the bill of rights what
24 would apply to section four would apply to section three.

25 DELEGATE DAHOOD: (Inaudible. Microphone turned off.)

1 --question. It is very good, but I am being consistent. What
2 we have added to section three is, in my judgment, self-execu-
3 ting with respect to an individual who is personally affected
4 with respect to his health and to his property and I think that
5 the statement is a good one. I think it's an amendment that
6 certainly ought to be in our bill of rights. I just wanted to
7 be sure that we were not trying through some sort of subrosa
8 method to bring in the public trust doctrine which was dis-
9 credited here on the Convention floor. Thank you, Delegate
10 Robinson.

11 CHAIRMAN GRAYBILL: Is there further discussion of
12 section four?

13 (No response)

14 CHAIRMAN GRAYBILL: Very well, members of the commit-
15 tee, you have before you for your consideration, upon the re-
16 commendation of Mrs. Mansfield, that when this committee does
17 arise and report, after having had under consideration section
18 four -- just a minute Mr. Habedank.

19 Mr. Habedank.

20 DELEGATE HABEDANK: Mr. Chairman, we have an amend-
21 ment to be disposed of first.

22 CHAIRMAN GRAYBILL: Oh, so we do. Excuse me. Mr.
23 Habedank has an amendment to strike the words, by any person,
24 firm, corporation, or institution; or, on lines eight and nine.
25 Is there further discussion?

1 DELEGATE FOSTER: Roll call.

2 CHAIRMAN GRAYBILL: You want a roll call vote? Very
3 well, so many as are in favor of the motion to strike those
4 words, vote Aye; and so many as are opposed, vote No. Has
5 every Delegate voted?

6 (No response)

7 CHAIRMAN GRAYBILL: Does any Delegate wish to change
8 his vote?

9 (No response)

10 CHAIRMAN GRAYBILL: Will the Clerk take the ballot?

11 Aasheim	-	Nay	Blend	-	Nay
12 Anderson, J.	-	Aye	Bowman	-	Nay
13 Anderson, O.	-	Nay	Brazier	-	Nay
14 Arbanas	-	Nay	Brown	-	Aye
15 Arness	-	Absent	Bugbee	-	Nay
16 Aronow	-	Nay	Burkhardt	-	Nay
17 Artz	-	Nay	Cain	-	Nay
18 Ask	-	Nay	Campbell	-	Nay
19 Babcock	-	Nay	Cate	-	Nay
20 Barnard	-	Nay	Champoux	-	Nay
21 Bates	-	Nay	Choate	-	Nay
22 Belcher	-	Excused	Conover	-	Nay
23 Berg	-	Nay	Cross	-	Nay
24 Berthelson	-	Aye	Dahood	-	Nay
25 Blaylock	-	Nay			

1	Davis	-	Nay	Joyce	-	Nay
2	Delaney	-	Aye	Kamhoot	-	Aye
3	Driscoll	-	Nay	Kelleher	-	Absent
4	Drum	-	Absent	Leuthold	-	Nay
5	Eck	-	Nay	Loendorf	-	Nay
6	Erdmann	-	Nay	Lorello	-	Nay
7	Eskildsen	-	Excused	Mahoney	-	Aye
8	Etchart	-	Nay	Mansfield	-	Nay
9	Felt	-	Nay	Martin	-	Nay
10	Foster	-	Nay	McCarvel	-	Nay
11	Furlong	-	Nay	McDonough	-	Nay
12	Garlington	-	Nay	McKeon	-	Absent
13	Gysler	-	Absent	McNeil	-	Nay
14	Habedank	-	Aye	Melvin	-	Nay
15	Hanson, R. S.	-	Nay	Monroe	-	Nay
16	Hanson, R.	-	Nay	Murray	-	Nay
17	Harbaugh	-	Nay	Noble	-	Aye
18	Harlow	-	Absent	Nutting	-	Excused
19	Harper	-	Nay	Payne	-	Nay
20	Harrington	-	Nay	Pemberton	-	Nay
21	Heliker	-	Nay	Rebal	-	Nay
22	Holland	-	Nay	Reichert	-	Nay
23	Jacobsen	-	Nay	Robinson	-	Nay
24	James	-	Nay	Roeder	-	Nay
25	Johnson	-	Aye	Rollins	-	Nay

1	Romney	-	Aye	Swanberg	-	Nay
2	Rygg	-	Aye	Toole	-	Nay
3	Scanlin	-	Nay	Van Buskirk	-	Nay
4	Schiltz	-	Nay	Vermillion	-	Nay
5	Siderius	-	Nay	Wagner	-	Absent
6	Simon	-	Nay	Ward	-	Nay
7	Skari	-	Absent	Warden	-	Nay
8	Sparks	-	Nay	Wilson	-	Aye
9	Speer	-	Nay	Woodmansey	-	Nay
10	Studer	-	Aye	Mr. Chairman	-	Nay
11	Sullivan	-	Nay			

12 CLERK HANSON: Mr. Chairman, thirteen Delegates vot-
 13 ing Aye, seventy-six voting No.

14 CHAIRMAN GRAYBILL: Seventy-six Delegates having
 15 voted No and only thirteen Aye, Mr. Habedank's amendment fails.
 16 We are discussing section four. Are there other amendments or
 17 other discussion?

18 (No response)

19 CHAIRMAN GRAYBILL: Very well, members of the commit-
 20 tee, you have before you on the recommendation of Mrs. Mans-
 21 field that when this committee shall arise and report, after
 22 having had under consideration section four of the Bill of
 23 Rights proposal, that this committee recommend that it be
 24 adopted. So many as shall be in favor, say Aye.

25 DELEGATES: Aye.

1 CHAIRMAN GRAYBILL: Opposed, No.

2 DELEGATES: (No audible response)

3 CHAIRMAN GRAYBILL: It is adopted. Will the Clerk
4 read section five?

5 CLERK HANSON: (Reading) Section five, Freedom of
6 Religion: The state of Montana shall make no law respecting
7 an establishment of religion, or prohibiting the free exercise
8 thereof. (End reading) Mr. Chairman, section five.

9 CHAIRMAN GRAYBILL: Mr. Monroe.

10 DELEGATE MONROE: Mr. Chairman, I move that when
11 this committee does arise and report, after having had under
12 consideration section five of proposal eight, it recommend
13 that the same be adopted. Mr. Chairman, the committee decided
14 unanimously to substitute the concise wording of the freedom
15 of religion clause of the federal First Amendment. Much test-
16 imony was heard on this provision, most of it on the subject of
17 public aid to church-related schools. The committee felt that
18 this issue should be dealt with, as it was, by the Education
19 and Public Lands Committee and that the provision incorporated
20 into the declaration of rights should restrict itself to guar-
21 anteeing the free exercise of religion and prohibiting the es-
22 tablishment of any religion. The committee felt especially
23 strong about removing the anti-Mormon biases reflected in the
24 previous wording of article three, section four. This can be
25 found on page two of our present Constitution, section four.

1 Beyond that, the committee noted that since the religions which
2 historically were persecuted were those alleged to violate or
3 threaten the good order, peace and safety of the state, such
4 passages were dubious of merit in a statement of religious lib-
5 erty. Accordingly, both, of considerable length, were deleted.
6 What remains is the tradition-ridden guarantee of religious
7 liberty adopted by the first U.S. Congress in 1789 as part of
8 the federal Bill of Rights. Realizing the legal, social, pol-
9 itical problems of the church-state area are exceedingly com-
10 plex, it is not urged that this provision will simplify their
11 resolution. However, it will certainly not make the under-
12 standing of these compelling and sometimes paradoxical concerns
13 more difficult. We have, as it says, substituted the First
14 Amendment clause in regard to religious liberty. It makes it
15 a lot more simpler to understand, in my estimation. The pre-
16 sent section four of article three in our Constitution is some
17 one hundred and twenty-nine words, and in my estimation it is
18 not very clear. Our committee and members of the committee, as
19 well as many people in the Convention have received letters
20 from people saying that they feel that is clear. I do not
21 agree with that and some members of my committee do not agree
22 with that either. Some people have even went as far as saying
23 they would not be able to vote for the Constitution--the
24 adoption of the Constitution--if we altered section four in the
25 present Constitution in its present form. We feel that the

1 federal amendment in regard to religious freedom is quite ade-
2 quate and has served us for almost two hundred years. I move
3 for its adoption, Mr. President

4 CHAIRMAN GRAYBILL: Is there discussion of this art-
5 icle? This section?

6 Mr. Rollins.

7 DELEGATE ROLLINS: I feel I ought to rise and give
8 thanks for the Mormons, in spite of the fact that you are only
9 eighty-two years behind times, because the Mormons abandoned
10 it officially in 1890 themselves.

11 CHAIRMAN GRAYBILL: Very well, members of the commit-
12 tee, you have before you for your consideration, upon the mo-
13 tion of Mr. Monroe, that when this committee does arise and re-
14 port, after having had under consideration section five of the
15 Bill of Rights, that it recommend the same do pass -- or, the
16 same be adopted. So many as shall be in favor of that motion,
17 please say Aye.

18 DELEGATES: Aye.

19 CHAIRMAN GRAYBILL: Opposed, No.

20 DELEGATES: (No audible response)

21 CHAIRMAN GRAYBILL: Section five is adopted. Section
22 six, Mr. Clerk.

23 CLERK HANSON: (Reading) Section six, Freedom of
24 Assembly: The people shall have the right peaceably to assem-
25 ble, petition for redress or to protest governmental action.

1 (End reading) Mr. Chairman, section six.

2 CHAIRMAN GRAYBILL: Mrs. Mansfield.

3 DELEGATE MANSFIELD: Mr. Chairman, I move that when
4 this committee does rise and report, after having had under
5 consideration section six of the Bill of Rights, it recommends
6 its adoption.

7 Mr. Chairman.

8 CHAIRMAN GRAYBILL: Mrs. Mansfield.

9 DELEGATE MANSFIELD: The committee unanimously recom-
10 mended that the former article three, section twenty-six be
11 adopted with only one stylistic change. The basic right to
12 assemble for redress of grievances by petition or remonstrance
13 remains unchanged. The wording was tightened up a little and
14 the phrase, protest governmental action, was substituted for
15 the phrasing, apply to those invested with the powers of govern-
16 ment for redress of grievances by remonstrance, unquote. In
17 doing so, the committee notes the paramount position of the
18 right and the invaluable function its responsible exercise
19 plays in a democratic society. Mr. Chairman, I move the adop-
20 tion of section six.

21 CHAIRMAN GRAYBILL: Mr. McNeil.

22 DELEGATE McNEIL: Mr. Chairman, I move to amend sec-
23 tion six, page five, line sixteen, by adding after the word,
24 or, the word (quote) peaceably (close quote).

25 Mr. Chairman.

1 CHAIRMAN GRAYBILL: Mr. McNeil's amendment has the
2 effect of adding at line sixteen on page five after the word,
3 or, the word, peaceably, so that the sentence reads: The people
4 shall have the right peaceably to assemble, petition for redress
5 or peaceably to protest governmental action.

6 Mr. McNeil.

7 DELEGATE McNEIL: Mr. Chairman, I think the amendment
8 speaks for itself. I agree with the committee's stylistic
9 change and updating of the language. However, I would not
10 want the absence of the word, peaceably, to imply any endorse-
11 ment of violent protest of governmental action.

12 CHAIRMAN GRAYBILL: Mrs. Babcock.

13 DELEGATE BABCOCK: Mr. Chairman, the word, peaceably,
14 is already on line fifteen and I believe it already applies to
15 all of those other words.

16 CHAIRMAN GRAYBILL: Mr. McNeil.

17 DELEGATE McNEIL: Mr. Chairman, I must disagree with
18 that because of the conjunctive, or. The peaceably modifies
19 assemble. It does not affect petition for redress and I don't
20 want there to be any doubt that the protest of governmental
21 action must likewise be peaceable.

22 CHAIRMAN GRAYBILL: Is there any further discussion?

23 (No response)

24 CHAIRMAN GRAYBILL: All in favor of Mr. McNeil's
25 amendment to add the word, peaceably, on line sixteen before

1 peaceably protest governmental action, please say Aye.

2 DELEGATES: Aye.

3 CHAIRMAN GRAYBILL: Opposed, No.

4 DELEGATES: No.

5 CHAIRMAN GRAYBILL: Very well, that amendment is
6 adopted. Are there further amendments to section six?

7 Mr. Aasheim.

8 DELEGATE AASHEIM: Will Mr. Dahood yield to a ques-
9 tion?

10 CHAIRMAN GRAYBILL: Mr. Dahood, will you yield to
11 a question?

12 DELEGATE DAHOOD: I yield, Mr. Chairman.

13 DELEGATE AASHEIM: Just a matter of context here.
14 Why didn't you say to assemble peaceably rather than to put
15 the peaceably first? Why didn't you say to assemble peace-
16 ably?

17 DELEGATE DAHOOD: Or to assemble peaceably?

18 DELEGATE AASHEIM: On line fifteen, yes.

19 DELEGATE DAHOOD: Delegate Aasheim, are you referring
20 to the old wording of the Constitution?

21 DELEGATE AASHEIM: Well, it just seems like you are
22 putting the adverb out of place. You assemble peaceably, don't
23 you?

24 DELEGATE DAHOOD: Well, I frankly had not considered
25 it. The vice chairman, who, of course, is our expert in gram-

1 mar and English composition indicated to us that that was pro-
2 per wording. We accepted it and I fail to see where in any
3 way the meaning can be misconstrued. I thought the amendment
4 proposed by Delegate McNeil would do away with any ambiguity
5 but if somebody thinks the syntax can be corrected and improved,
6 I have no objection to it.

7 DELEGATE AASHEIM: A question, then. Do you want
8 peaceably petition, peaceably redress? Is that what your in-
9 tent was?

10 DELEGATE DAHOOD: Was that our intent?

11 DELEGATE AASHEIM: Yes.

12 DELEGATE DAHOOD: Yes, our intent was that in exer-
13 cising any of the rights that are set forth in section six,
14 that it must be done in a lawful, orderly and peaceable manner
15 and none of us experienced the ambiguity that has been expres-
16 sed on the floor.

17 CHAIRMAN GRAYBILL: Mr. Hanson.

18 DELEGATE ROBERT HANSON: Mr. President, I think if
19 you'll -- if Mr. Aasheim will look at the present wording in
20 section twenty-six of our present Constitution, he will see
21 that it says the people will have the right peaceably to assem-
22 ble and I don't think we plan on making any changes in the
23 language.

24 CHAIRMAN GRAYBILL: Mrs. Cross.

25 DELEGATE CROSS: Mr. Chairman, the word peaceably,

1 with that ending, is an adverb and adverbs modify all forms of
2 verbs and infinitives are forms of verbs, so I don't see what
3 the question is in this particular sentence.

4 (Laughter)

5 CHAIRMAN GRAYBILL: I think the journal will at least
6 be clear. Is there any other question?

7 (No response)

8 CHAIRMAN GRAYBILL: Very well, members of the commit-
9 tee, you have before you for your consideration, upon the mo-
10 tion of -- Mrs. Mansfield, is this yours?

11 DELEGATE MANSFIELD: Yes.

12 CHAIRMAN GRAYBILL: O.K. -- of Mrs. Mansfield --
13 that when this committee does arise and report, after having
14 had under consideration section six, as amended, that it re-
15 commend the same be adopted. All in favor say Aye.

16 DELEGATES: Aye.

17 CHAIRMAN GRAYBILL: Opposed?

18 DELEGATES: (No audible response)

19 CHAIRMAN GRAYBILL: It's adopted. Will the Clerk
20 read section seven?

21 CLERK HANSON: (Reading) Section seven, Freedom of
22 Speech, Expression and Press: no law shall be passed impair-
23 ing the freedom of speech or expression. Every person shall
24 be free to speak or publish whatever he will on any subject,
25 being responsible for all abuse of that liberty. In all suits

1 and prosecutions for libel or slander the truth thereof may be
2 given in evidence; and the jury, under the direction of the
3 court, shall determine the law and the facts. (End reading)

4 Mr. Chairman, section seven.

5 CHAIRMAN GRAYBILL: Mrs. Mansfield.

6 DELEGATE MANSFIELD: Mr. Chairman, I move that when
7 this committee does rise and report, after having had under
8 consideration section seven in the Bill of Rights, it recom-
9 mends the same to be adopted. Mr. President, section seven.
10 The committee unanimously proposes the adoption of the former
11 article three -- this is on page nineteen -- section ten with
12 one substantive change. The freedom of speech is extended, in
13 line with federal decisions under the First Amendment, to cov-
14 er the freedom of expression. Hopefully, this extension will
15 provide impetus to the courts in Montana to rule on various
16 forms of expression similar to the spoken word and the ways in
17 which one expresses his unique personality in an effort to re-
18 balance the general backseat status of states in the safeguard-
19 ing of civil liberties. The committee wishes to stress the
20 primacy of these guarantees in the hope that their enforcement
21 will not continue merely in the wake of the federal case law.
22 Other minor changes made in the section were merely stylistic
23 in nature except for the inclusion of the word, slander, to
24 provide protection against abuses of the free speech and press
25 guarantees in cases of spoken as well as written word. The

1 committee retained the established principle that in libel tri-
2 als the jury shall decide the law and the facts on the theory
3 that the removal of this clause might be construed as the denial
4 of a right. The principle is continued with the note that in
5 the cases of libel it is necessary for the prosecutor to con-
6 vince both the court and the jury before the free speech and
7 press protections are overridden--Harrington versus Butte
8 Miners Company, et al, in the Montana 550, 554, 139 page 451.
9 I move this adoption, Mr. Chairman.

10 CHAIRMAN GRAYBILL: Is there any discussion?

11 Mr. Loendorf.

12 DELEGATE LOENDORF: Mr. Chairman, would Mrs. Mans-
13 field yield to a question?

14 CHAIRMAN GRAYBILL: Mrs. Mansfield?

15 DELEGATE MANSFIELD: If I can answer it.

16 DELEGATE LOENDORF: Mrs. Mansfield, I have read your
17 comment and I haven't read Harrington v. the Miners Union,
18 but I'm concerned about juries determining questions of law in
19 libel cases. Would you just elaborate a bit on the reasons
20 the committee retained that?

21 DELEGATE MANSFIELD: You know, I think I'll turn
22 that over to Mr. Dahood. He's our legal --

23 DELEGATE DAHOOD: Thank you, Mrs. Mansfield.

24 CHAIRMAN GRAYBILL: Mr. Dahood, you may have the
25 floor.

1 DELEGATE DAHOOD: Very fine, Mr. Chairman. Thank
2 you very much. In response to the question, let me say that
3 the committee initially applied the same reasoning that is in
4 the mind of Delegate Loendorf at this time, but research indi-
5 cates to us -- does indicate to us there is a historical rea-
6 son for the language as contained in that section to the effect
7 that the jury shall determine both the law and the fact. I
8 think to the trained legal mind at first blush it seems incon-
9 ceivable that a jury shall have the right to determine the law,
10 but apparently in the common law days of England, the right of
11 free speech was considered so precious that the right with
12 respect to whether or not the law should apply in a particular
13 case was left to the jury rather than to the court so there
14 would be no abuse of that sacred right. That particular right
15 apparently was carried over from England to the United States
16 and the framers of the current Montana Constitution and Bill of
17 Rights carried that protection into the section on free speech.
18 There was a Montana case, which Mrs. Mansfield cited in her
19 rationale supporting section seven, and that particular concept
20 was set forth in that case. We do not think that it is going
21 to change the manner in which cases involving libel and sland-
22 er are tried in the state of Montana, since the juries are
23 still expected to take their guidance with respect to the law
24 from the court, but it does provide the jury with leeway in the
25 event they should think, within their community conscience as

1 jurors, that in this particular instance, even though there
2 might be a technical violation of the law, the circumstances
3 are such that there should not be any type of penalty for that
4 violation, the jury would have the right then to disregard the
5 technical aspects of the law and find that there has not been
6 any libel in that instance, either in a case of civil libel or
7 criminal libel. To be consistent, to expand upon the right,
8 we have included slander within that rationale inasmuch as
9 juries tend to follow that particular concept for determining
10 libel and slander cases in any event. We did not want to take
11 away any right that the citizens of Montana presently have in
12 the current Bill of Rights and our committee takes great pride
13 in the fact that the proposal you have before you now takes
14 away nothing that the citizens of the state of Montana have,
15 but rather expands their rights in many respects so that ex-
16 panding government shall continue to be, perhaps will become
17 more responsible to the citizens of the state of Montana. I
18 hope that explanation does respond to the question. Thank you.

19 CHAIRMAN GRAYBILL: Mr. Davis.

20 DELEGATE DAVIS: Mr. President, if Mr. Dahood would
21 yield to a question.

22 CHAIRMAN GRAYBILL: Mr. Dahood?

23 DELEGATE DAHOOD: I yield, Mr. Chairman.

24 DELEGATE DAVIS: Mr. Dahood, subsequent to the Har-
25 rington case cited in 48 Montana, I believe, or whatever it

1 is, our supreme court has held that while under the provisions
2 of this section the juries in libel suits shall determine the
3 law and the facts, the function of the trial court and jury is
4 not greatly different from what it is in other cases. Thus,
5 it is for the court and not the jury to pass upon the admis-
6 sibility of evidence, upon motions for non-suit, or upon a
7 directed verdict upon motions for a new trial and motions to
8 set aside verdicts and vacate judgments, and so, though libel
9 suits are sui juris, are subject to the rules of practice
10 found wise and useful in administering justice generally in
11 the courts. I know that you have considered this matter but
12 it seems like this is an archaic carry-over that isn't really
13 being followed by the courts anyway and I wonder if you would
14 resist a motion to strike that portion of it?

15 DELEGATE DAHOOD: Yes, I do, Carl. I do resist it
16 on behalf of the committee simply because what you have just
17 stated was the premise upon we approached the section at our
18 first study session, but after reviewing the law we find that
19 there are general substantial reasons why the section should
20 remain as it is. The case that you are talking about indi-
21 cates the traditional function between court and jury does
22 apply in the libel and slander case to the point where the
23 court will instruct the jury as to what the law is in a par-
24 ticular case. The court will continue to determine whether
25 or not there is some basis for granting a motion for a new

1 trial. The court will continue to rule upon objections with
2 respect to the evidence. But, in the event the jury in a
3 libel suit should determine that in this particular instance,
4 notwithstanding the facts may fall within the proscription of
5 that particular legal rule, nevertheless the jury does have
6 the right to disregard the law in that instance and find in
7 favor of free speech in that instance. The Montana court would
8 not have the right then, under that rationale, to grant a
9 motion for a new trial. The distinction does exist and I want
10 to assure you, Carl, that there is reason for leaving the sec-
11 tion as we have submitted it to this Convention.

12 CHAIRMAN GRAYBILL: Mr. Schiltz.

13 DELEGATE SCHILTZ: Will the gentleman, Mr. Dahood,
14 yield to another question, please?

15 DELEGATE DAHOOD: I yield, Mr. Chairman.

16 DELEGATE SCHILTZ: Mr. Dahood, I suspect this is in
17 the present Constitution and if it is, it's probably always
18 bothered me. In line twenty-two, it says prosecutions for
19 libel or slander the truth thereof -- and to me libel and
20 slander are, per se, untruthful -- and then when you say there-
21 of, it bothers me. Could we change that to of statements or
22 something like that?

23 DELEGATE DAHOOD: Delegate Schiltz, you raise a ques-
24 tion that of course we raised and I confess to you that there
25 is language in some of these sections that perhaps could be

1 stated in clearer legal language, but we thought in some of
2 these instances we ought to pay some heed to tradition. I
3 think that all of us as lawyers appreciate that whether it is
4 stated in a constitutional bill of rights or not, truth, un-
5 less actuated by malice, is a complete defense and rather than
6 be concerned about changing some of the words in that section
7 and bring down the critique of certain segments of Montana so-
8 ciety, we thought that this might fall within the legal con-
9 cept of demitimus, something that perhaps is too trifling to
10 require any type of major change by the committee, so we left
11 it in its original condition. I hope and trust that that
12 explanation is satisfactory to avoid a motion to amend at this
13 time. Thank you, Mr. Chairman.

14 CHAIRMAN GRAYBILL: Is there other discussion?

15 (No response)

16 CHAIRMAN GRAYBILL: Very well, the question is on
17 section seven. Members of the committee, you have before you,
18 on the recommendation of Mrs. Mansfield, that when this com-
19 mittee rises and reports, after having under consideration sec-
20 tion seven of the Bill of Rights article, that this committee
21 recommend the same be adopted. All in favor, please say Aye.

22 DELEGATES: Aye.

23 CHAIRMAN GRAYBILL: Opposed, No.

24 DELEGATES: (No audible response)

25 CHAIRMAN GRAYBILL: It is adopted. Section eight.

1 CLERK HANSON: (Reading) Section eight, Right of
2 Participation: The public shall have the right to expect gov-
3 ernmental agencies to afford every feasible opportunity for
4 citizen participation in the operation of the government prior
5 to the final decision. (End reading) Mr. Chairman, section
6 eight.

7 CHAIRMAN GRAYBILL: Mrs. Eck.

8 DELEGATE ECK: Mr. Chairman, I move that when this
9 committee does arise and report, after having under consider-
10 ation section eight of proposal eight, that it recommend the
11 same be adopted.

12 Mr. Chairman.

13 CHAIRMAN GRAYBILL: Mrs. Eck.

14 DELEGATE ECK: The committee unanimously adopted
15 this section in response to the increased public concern and
16 literature about citizen participation in the decision-making
17 processes of government. The provision is in part a consti-
18 tutional sermon designed to serve notice to agencies of govern-
19 ment that the citizens of the state will expect to participate
20 in agency decisions prior to the time the agency makes up its
21 mind. In part, it is also a commitment at the level of fund-
22 amental law to seek structures, rules and procedures that max-
23 imize the access of citizens to the decision-making institu-
24 tions of state government. If you recall when we were discus-
25 sing the legislative article, we did not arrive at satisfactory

1 wording to the effect that the legislature must announce the
2 dates of hearings so many days ahead of time. I think that
3 this provision would very well take care of the fact that the
4 legislature must provide for some -- for citizen participation
5 in its hearings. I believe that other agencies of government
6 -- and I think right now of the Forest Service -- have also be-
7 come very much aware of the fact that there are real values in
8 citizen participation where a decision is forthcoming. They
9 announce it to the public and ask for public input, and they
10 have found that this not only provides a good public relations
11 with the public but also provides them with some of the kinds
12 of information they need, really, in making their decisions.
13 It is hoped that this provision will play a role in reversing
14 the dissatisfactions increasingly expressed regarding bureau-
15 cratic authority insulated from public scrutiny and participa-
16 tion. The wording of the provision is derived from Delegate
17 Don Foster's proposal number thirty-eight. Thank you.

18 CHAIRMAN GRAYBILL: Is there any discussion of sec-
19 tion eight?

20 Mr. Habedank.

21 DELEGATE HABEDANK: Mr. Chairman, would Mr. Dahood
22 yield to a question?

23 CHAIRMAN GRAYBILL: Mr. Dahood?

24 DELEGATE DAHOOD: I yield, Mr. Chairman.

25 DELEGATE HABEDANK: Mr. Dahood, as I read this, I am

1 in sympathy with what is being attempted, but I am concerned
2 about the use of the words, every feasible, rather than reason-
3 able. It would seem to me that every feasible would be -- apt
4 to be construed that no matter what you do, something else
5 could have been done to afford citizen opportunity to partici-
6 pate, and without making a motion, I would like your rationale
7 on why you have used every feasible rather than reasonable.

8 DELEGATE DAHOOD: Well, in our judgment, feasible
9 would include reasonable within it. What we were trying to
10 express in this particular section was that the legislature
11 would do everything possible which is reasonable and feasible
12 to allow the citizen to know that some decision is about to
13 be made, that if the citizen wants to voice an opinion with
14 respect to that decision that they are going to be given not
15 only a reasonable opportunity but a feasible one--one that
16 provides them with easier access to approach that particular
17 agency so that they can make their particular opinion known.
18 Now you might, for example, give reasonable notice under cir-
19 cumstances where it might be difficult to approach the agency
20 in a meaningful manner, such as perhaps having some undue re-
21 strictions upon the ability of that particular citizen to make
22 his opinion known to that committee, so by feasible we are in-
23 tending to broaden the scope of reasonable to provide that the
24 legislature shall set up guidelines that will give some real
25 substance to the right of the individual citizen to partici-

1 pate with respect to any decision-making function of govern-
2 ment. As the comment would indicate, Delegate Habedank, this
3 -- I think in substance is what we would call a constitutional
4 sermon. I think we are laying down a particular principle.
5 We want the legislature to implement it. I am not prepared to
6 say there is not a self-executing facet to it as well. If the
7 legislature did not do anything about it at all, perhaps if
8 some decision were made without giving notice, without giving
9 a citizen a chance to participate, I think that citizen could
10 contend that there was an unconstitutional legislative activ-
11 ity. But, we have faith in the legislature. We think the
12 legislature when it is formed after the new Constitution takes
13 effect is going to look at this particular section. We think
14 they are going to do something about it.

15 CHAIRMAN GRAYBILL: Mr. Habedank.

16 DELEGATE HABEDANK: Will Mr. Dahood yield to one
17 more question?

18 DELEGATE DAHOOD: Yes, I will.

19 DELEGATE HABEDANK: As I understand your intent, then,
20 it is the thought and intent of the committee that every feas-
21 ible leaves to the legislature the power by statute to deter-
22 mine what is feasible and does not extend to an individual
23 coming in and convincing a court that whatever the legislature
24 says, something more could have been done.

25 DELEGATE DAHOOD: No, Otto, I would think that if the

1 legislature provided a particular system whereby there will be
2 government participation, I think a court could look at it and
3 say that they have met the criterion of feasible as set forth
4 in the Constitution. It's a reasonable set of guidelines. I
5 don't think we'd have that trouble. Thank you, Mr. Chairman.

6 CHAIRMAN GRAYBILL: Mr. Davis.

7 DELEGATE DAVIS: Mr. Chairman. Mr. Dahood, would
8 you yield to a question?

9 DELEGATE DAHOOD: I yield, Mr. Chairman.

10 DELEGATE DAVIS: Mr. Dahood, would you interpret
11 this to mean that any act taken by a school board, a city
12 council, a board of county commissioners, any other board or
13 commission that was not noticed -- in other words, any item
14 of business they took up they hadn't previously published no-
15 tice on and advised all the public would be illegal and un-
16 constitutional under every feasible, because it would always
17 probably be feasible to do this. Would you please comment on
18 that?

19 DELEGATE DAHOOD: Yes, I will comment on that, Dele-
20 gate Davis. I think the intent of this is that any government-
21 al agency, any agency that represents the people of this state,
22 before it makes any substantial decision -- and I think again
23 we've got to depend upon the courts to interpret that in a wise
24 and common sensical way -- must give that citizen some notice
25 so that he can appear and participate. I think that's the

1 function of democratic government and I don't think it's too
2 great an obligation on government.

3 DELEGATE DAVIS: Mr. President, I move to amend this
4 article by striking every feasible and put in reasonable oppor-
5 tunity.

6 CHAIRMAN GRAYBILL: Very well, that's in line twenty-
7 seven. Mr. Davis proposes to strike the words, every feasible,
8 and substitute therefor the word, reasonable, so that the sen-
9 tence would read: have the right to expect governmental agen-
10 cies to afford reasonable opportunity for citizen participa-
11 tion.

12 Mr. Davis.

13 DELEGATE DAVIS: I won't speak further on it. I
14 think it's self-evident. In every branch of our government,
15 from school board meetings on, you have decisions and differ-
16 ent business items come up that you would have to publish
17 your complete agenda. The county commissioners, everybody
18 knows when the board meets, but they don't know all the items
19 that may be necessary to discuss. I think it would restrict
20 the operation of and function of our government if you have
21 every feasible -- is really difficult an interpretation.

22 CHAIRMAN GRAYBILL: Mr. Dahood.

23 DELEGATE DAHOOD: Mr. Chairman, I do not experience
24 any particular problem in having the word, reasonable, substi-
25 tuted. I'm sure that my committee would not have any particu-

1 lar difficulty. I think, in our judgment, feasible was synony-
2 mous with reasonable but somewhat more expansive, but I think,
3 as a lawyer, having been confronted with the use of the word,
4 reasonable, so many times, having seen it defined so many times
5 that I think the definition the law would give it would cer-
6 tainly serve the purpose that we intend to serve by section
7 eight, and if it pleases this body, I wish to state here and
8 now that the committee has no objections to that amendment.

9 CHAIRMAN GRAYBILL: Very well, the issue is on Mr.
10 Davis' amendment to delete the words, every feasible, and sub-
11 stitute therefor the word, reasonable, on line twenty-seven so
12 that section eight reads: The public shall have the right to
13 expect governmental agencies to afford reasonable opportunity
14 for citizen participation in the operation of the government
15 prior to the final decision.

16 Mrs. Bugbee.

17 DELEGATE BUGBEE: A roll call vote, please.

18 CHAIRMAN GRAYBILL: Well, we'll have a roll call
19 vote. So many as shall be in favor of that motion, say Aye --
20 vote Aye, and so many as shall be opposed, vote No. Have all
21 the Delegates voted?

22 (No response)

23 CHAIRMAN GRAYBILL: Any Delegate wish to change his
24 vote?

25 (No response)

1	CHAIRMAN GRAYBILL: Please take the ballot.					
2	Aasheim	-	Aye	Champoux	-	Absent
3	Anderson, J.	-	Aye	Choate	-	Aye
4	Anderson, O.	-	Aye	Conover	-	Aye
5	Arbanas	-	Aye	Cross	-	Aye
6	Arness	-	Absent	Dahood	-	Aye
7	Aronow	-	Aye	Davis	-	Aye
8	Artz	-	Aye	Delaney	-	Aye
9	Ask	-	Aye	Driscoll	-	Aye
10	Babcock	-	Aye	Drum	-	Aye
11	Barnard	-	Aye	Eck	-	Aye
12	Bates	-	Aye	Erdmann	-	Aye
13	Belcher	-	Excused	Eskildsen	-	Excused
14	Berg	-	Aye	Etchart	-	Aye
15	Berthelson	-	Aye	Felt	-	Nay
16	Blaylock	-	Nay	Foster	-	Aye
17	Blend	-	Nay	Furlong	-	Absent
18	Bowman	-	Aye	Garlington	-	Aye
19	Brazier	-	Aye	Gysler	-	Absent
20	Brown	-	Aye	Habedank	-	Absent
21	Bugbee	-	Nay	Hanson, R. S.	-	Aye
22	Burkhardt	-	Nay	Hanson, R.	-	Aye
23	Cain	-	Aye	Harbaugh	-	Nay
24	Campbell	-	Aye	Harlow	-	Aye
25	Cate	-	Absent	Harper	-	Nay

1	Harrington	-	Aye	Pemberton	-	Aye
2	Heliker	-	Nay	Rebal	-	Aye
3	Holland	-	Aye	Reichert	-	Aye
4	Jacobsen	-	Absent	Robinson	-	Aye
5	James	-	Aye	Roeder	-	Aye
6	Johnson	-	Aye	Rollins	-	Aye
7	Joyce	-	Aye	Romney	-	Aye
8	Kamhoot	-	Aye	Rygg	-	Aye
9	Kelleher	-	Absent	Scanlin	-	Aye
10	Leuthold	-	Aye	Schiltz	-	Aye
11	Loendorf	-	Aye	Siderius	-	Nay
12	Lorello	-	Aye	Simon	-	Aye
13	Mahoney	-	Nay	Skari	-	Absent
14	Mansfield	-	Aye	Sparks	-	Aye
15	Martin	-	Aye	Speer	-	Aye
16	McCarvel	-	Aye	Studer	-	Aye
17	McDonough	-	Aye	Sullivan	-	Aye
18	McKeon	-	Absent	Swanberg	-	Aye
19	McNeil	-	Aye	Toole	-	Aye
20	Melvin	-	Aye	Van Buskirk	-	Aye
21	Monroe	-	Aye	Vermillion	-	Nay
22	Murray	-	Aye	Wagner	-	Absent
23	Noble	-	Aye	Ward	-	Aye
24	Nutting	-	Excused	Warden	-	Aye
25	Payne	-	Aye	Wilson	-	Aye

1 Woodmansey - Aye Mr. Chairman - Aye

2 CLERK HANSON: Mr. Chairman, seventy-five Delegates
3 voting Aye, eleven voting No.

4 CHAIRMAN GRAYBILL: Seventy-five Delegates having
5 voted Aye, eleven voting No, Mr. Davis' amendment prevails.
6 We are still discussing section eight. Are there any other
7 matters?

8 Mr. Garlington.

9 DELEGATE GARLINGTON: Mr. Chairman, I have said be-
10 fore, I think it's the responsibility of this body to deliber-
11 ate carefully and not to do things that are going to create a
12 lot of difficulty and confusion in the future. I am concerned
13 about what is meant by the phrase, opportunity for citizen
14 participation in the operation of government. This, I take it,
15 operation means the decision-making performance of government
16 and when you participate in it, this, to some people, would
17 mean the opportunity perhaps to vote or to argue, present a
18 position in the course of formation of that decision, and I
19 want to propose an example, an illustration of how this might
20 work. I have had considerable experience in the past represent-
21 ing individuals who have been subject to condemnations by the
22 state highway department and there is quite an elaborate ap-
23 praisal ceremony that the state highway department conducts.
24 It is always done in the utmost secrecy and there is quite a
25 lot of skirmishing that goes on between the right-of-way agent

1 and the owner usually before the lawyer ever gets into it, and
2 my question is whether this language would not enable any land
3 owner whose land lies within the course of the interstate or
4 some other highway thing to go to the highway department and
5 participate in the appraisal proceedings and the determination
6 as to how his particular parcel was to be bargained for and
7 acquired, and I certainly wouldn't mind this on behalf of
8 clients whom I might represent because it would greatly advan-
9 tage his dealings with the department of government involved,
10 but I think you can see it would create quite a lot of havoc
11 in the conduct of government. Were this to be applied to any
12 other phases of governmental function, I think we would be in
13 trouble, and I bring this up so that we can look at these words
14 and make sure that whatever we draft here really states what
15 our intention is and if there are limits to what we are auth-
16 orizing, and this is a mandatory right that a citizen could
17 enforce on his own because it starts right out--the public
18 shall have the right--and it would therefore presumably be
19 enforceable in the court, and I would like to know whether it
20 could be pushed as far as I have indicated.

21 CHAIRMAN GRAYBILL: Mr. Dahood.

22 DELEGATE DAHOOD: Mr. Chairman, I think Delegate
23 Garlington is to be commended for bringing up this point be-
24 cause I think, probably to someone who did not participate in
25 our committee debates, might think that that problem can arise

1 from the language that is contained in section eight. In our
2 judgment, it cannot arise from the language that is contained
3 in section eight simply because it does not support the ration-
4 ale and the record of this particular debate; this dialogue and
5 this colloque between Delegate Garlington and Delegate Dahood
6 I think will lay that particular problem to rest forever. What
7 is intended by section eight is that any rules and regulations
8 that shall be made and formulated and announced by any govern-
9 mental agency, which of course are going to affect the citizens
10 of this state and the common welfare, shall not be made until
11 some notice is given so that the citizen will have a reasonable
12 opportunity to participate with respect to his opinion, either
13 for or against that particular administrative action. With
14 respect to the eminent domain situation that Delegate Gar-
15 lington talks about, that is not within the ambit of section
16 eight. That involves a particular treatment of an individ-
17 ual right under laws, rules and regulations already made for
18 which the courts, of course, provide the type of protection
19 and the type of due process that we think the citizen needs to
20 protect that particular right. I hope and trust that for Del-
21 egate Garlington, at least, that answer does serve to set
22 aside the particular concern at this time.

23 CHAIRMAN GRAYBILL: Mrs. Blend.

24 DELEGATE BLEND: I would like to shed a little dif-
25 ferent thinking on this subject, Mr. Chairman. I am particu-

1 larly delighted to see this section presented in the Bill of
2 Rights. I have been involved in a citizen's participation
3 group for several years now and I am very much aware of the
4 antagonism of government toward citizen's participation in its
5 deliberations. They feel that citizen involvement is disruptive,
6 that we have elected them to make the laws, therefore we
7 should not interfere, and I believe that this particular section
8 could bring about an involvement of people on the local
9 level, particularly, in a very fine way. Thank you.

10 CHAIRMAN GRAYBILL: Mr. Harbaugh.

11 DELEGATE HARBAUGH: Mr. Chairman, I am very much in
12 accord with the things that have been said here but it seems
13 to me that all of this misses the point very badly. The problem,
14 it seems to me, is here we have a statement that says the
15 public shall have the right, but it is a right to what? A
16 right to expect. Well, I submit the right to expect something
17 is not a right at all. Therefore, I would move to amend section
18 eight by striking the words on line twenty-five, the public
19 shall, and on line twenty-six, have the right to expect,
20 and to further strike --

21 CHAIRMAN GRAYBILL: Now, just a minute -- just a
22 minute. I've got the public shall. What else are you striking?
23

24 DELEGATE HARBAUGH: The public shall have the right
25 to expect -- to strike those words, capitalize governmental

1 agencies, and strike the word, to, and in place thereof, put
2 the word, shall, so that the section will read: Governmental
3 agencies shall afford every reasonable opportunity for citizen
4 participation in the operation of the government prior to the
5 final decision.

6 CHAIRMAN GRAYBILL: I trust you mean governmental
7 agencies shall afford reasonable opportunity. We've struck
8 the word, every, before. You don't need that back in, do you?

9 DELEGATE HARBAUGH: No -- yes.

10 CHAIRMAN GRAYBILL: All right, Mr. Harbaugh's amend-
11 ment would strike from lines twenty-five and twenty-six the
12 phrase, the public shall have the right to expect -- strike
13 that phrase and then start with a capital "G": Governmental
14 agencies -- and then insert the word, shall --afford reasonable
15 opportunity for citizen participation in the operation of gov-
16 ernment prior to final decision.

17 Mr. Harbaugh.

18 DELEGATE HARBAUGH: Mr. Chairman, it seems to me that
19 this is really the intent of what the committee has envisioned
20 here and that the way that the proposal is phrased at present,
21 it really does not do that; that all that the public is given
22 is the right to expect something. I would submit that making
23 the amendment that I have proposed would clarify this right
24 that the public is to have under this section.

25 CHAIRMAN GRAYBILL: Is there further discussion?

1 Mr. Foster.

2 DELEGATE FOSTER: Mr. Chairman, fellow Delegates,
3 as one of the authors of this particular section, I would not
4 be opposed to Delegate Harbaugh's amendment although, person-
5 ally, I don't think it really changes either the intent or the
6 effect of this section. But, if this body would like to amend
7 it in this manner, it certainly would not be in opposition to
8 my original thoughts.

9 CHAIRMAN GRAYBILL: Mr. Dahood.

10 DELEGATE DAHOOD: Mr. Chairman, Delegate Foster con-
11 ferred with me just a moment ago and asked my opinion on this
12 and I told him that certainly stating the intent that we had
13 in mind and with that premise, I certainly would not quarrel
14 with the delegate with respect to his proposed amendment. But
15 I can submit one reason as to why there should not be an amend-
16 ment and that is from the standpoint of legislative implement-
17 ation. We intend to provide by section eight not only a right
18 but a constitutional direction to the legislature to implement
19 that right by setting forth the guidelines and setting forth
20 the requirements of governmental agencies in this regard. If
21 we accept the amendment the language would tend to indicate
22 that we have a self-executing right that does not require any
23 particular guideline from the legislature. I would then have
24 a concern and that concern would be this. Who, then, would
25 determine whether or not the agency in question is providing

1 the type of opportunity or the type of regulation for citizen
2 participation that would satisfy the constitutional directive?
3 I think the language of the committee as it is before you now
4 without amendment is going to require that there be uniform
5 rules and regulations set by the legislature with respect to
6 citizen participation and I submit that Delegate Harbaugh's
7 concern that the word expect is not strong enough, is not a
8 matter that should cause us any apprehension. It is a matter
9 of constitutional draftsmanship that in certain areas of basic
10 and fundamental rights you make no attempt to be precise. You
11 merely make an attempt to set the principle down in general
12 language so that the legislature or the implementing law-making
13 body will have the opportunity and will have the latitude to
14 set forth the guidelines that will best implement that partic-
15 ular policy and have the opportunity to change those guide-
16 lines with the passing years as circumstances change and dif-
17 ferent needs arise. So, notwithstanding the fact that Delegate
18 Foster and I are satisfied that the language as amended may
19 tend to secure for the citizens the same objective, we will
20 submit at this time that the motion to amend should be resisted
21 simply because it is too restrictive with respect to the type
22 of uniform guidelines that we would want the legislature in
23 its wisdom to enact and, therefore, I oppose the motion to
24 amend.

25 CHAIRMAN GRAYBILL: Mr. Joyce.

1 DELEGATE JOYCE: Would Delegate Dahood yield to a
2 question?

3 DELEGATE DAHOOD: Mr. Chairman, I yield.

4 DELEGATE JOYCE: Is there any -- in your studies,
5 did you find any other state constitution that had a similar
6 provision?

7 DELEGATE DAHOOD: There were similar state constitu-
8 tions that took up this particular issue, Mr. Joyce. I do not
9 recall that there was any state constitution that had precisely
10 this particular language. I do recall several that did pro-
11 vide that there should be citizen participation with respect
12 to governmental matters, and I submit to you, Mr. Joyce, in
13 answering your question, that I don't think any governmental
14 agency should have any concern or any apprehension about having
15 a citizen participate before any rule or regulation is laid
16 down that is going to affect the life of that particular cit-
17 izen. I should think that any governmental agency within a
18 democracy would welcome the opinion of the citizen before some
19 guideline is set down with respect to his conduct and his life
20 as a citizen.

21 DELEGATE JOYCE: Well, let me ask you another ques-
22 tion, Mr. Dahood.

23 DELEGATE DAHOOD: I yield once again, Mr. Chairman.

24 DELEGATE JOYCE: Would --

25 CHAIRMAN GRAYBILL: All right. Try this time just

1 to answer, Mr. Dahood.

2 (Laughter)

3 DELEGATE JOYCE: Would you interpret this section as
4 giving, say, me the right to participate in the supreme court
5 conferences when they are deciding cases that I have argued?

6 DELEGATE DAHOOD: No, I do not, and it wouldn't do
7 any good anyway.

8 (Laughter)

9 DELEGATE JOYCE: Well, I know the -- may I speak
10 then, Mr. Chairman? I move --

11 CHAIRMAN GRAYBILL: Mr. Joyce.

12 DELEGATE JOYCE: I move as a substitute motion, I
13 suppose -- there has to be a villain in the piece and I'm
14 willing to be the villain -- I move to strike section eight
15 in its entirety. May I speak on the motion?

16 CHAIRMAN GRAYBILL: Mr. Joyce's motion is to strike
17 section eight in its entirety. O.K., Mr. Joyce.

18 DELEGATE JOYCE: Mr. Chairman, members of the commit-
19 tee, it seems to me that however laudatory the language may be,
20 that when we are writing a bill of rights we ought to give
21 people rights or not rights, but to say they have the right to
22 expect something gives them no right at all, as Delegate Har-
23 baugh pointed out, and it seems to me that with the amendment
24 the government will afford every reasonable opportunity to
25 participate in the operation of government just makes the whole

1 proposition unworkable. It seems to me it turns our system of
2 government from a republic into a true democracy. If every-
3 body's got the right to participate in every decision that's
4 made in government, why, then, it will disrupt the government
5 in that, under our system of government we elect people to make
6 decisions. We may not agree with them and we may think they're
7 crazy and we may want to vote against those people when they
8 come up for election again because they've made decisions that
9 we don't like. But, it seems to me that this is completely
10 unworkable to allow the individual citizen to participate in
11 the decision-making; that, actually, the decision-making must
12 necessarily rest with the people who are, in fact, elected.
13 And, as far as -- it just seems to me to write into the Con-
14 stitution the right to participate in the decision will just
15 create more harm than good and yet it really doesn't give any-
16 body a right and if, as Delegate Dahood says, the right is
17 subject to reasonable legislation -- it doesn't say that the
18 legislature can set up any rights on it. It gives an absolute
19 right to participate and on the whole I think it will do more
20 harm than good and I think we ought to strike the whole sec-
21 tion.

22 CHAIRMAN GRAYBILL: Is there further discussion?

23 Mr. Foster.

24 DELEGATE FOSTER: Mr. Chairman and fellow Delegates,
25 I wish to speak in opposition to the motion of Delegate Joyce.

1 I think that this is a very important question and I think that
2 we should be very well aware of what this could -- what this
3 committee is attempting to do. The continuing growth of bur-
4 eaus has brought a new dimension to our representative form
5 of government. We have drawn clearer lines of election for
6 legislative officials. We have devised a more responsive sys-
7 tem of selection and election of judicial officials. We have
8 retained an extensive elective process for our executive of-
9 ficials. But what of the bureaus, the long arm of government
10 with which the average citizen most often comes in contact,
11 the long arm of government which is not responsive to elective
12 officials, the long arm of government with which many, if not
13 most of our Montana citizens have met frustrating resistance
14 and/or indifference. Elections do not materially affect the
15 bureaus. Political pressures are not sufficient to juvenate
16 response to public need. Public awareness and access seem to
17 be the only tools to remind the great mass of public servants
18 that their job is to serve the needs of the public and no other.
19 They are paid by tax dollars to benefit the public above all
20 else. It is my opinion that many Montanans' dissatisfaction
21 with government stem from lack of awareness of the primary role
22 of public servants to serve the public, be they rich or poor,
23 strong or weak, helpful or helpless. It is my opinion that
24 many Montanans want to be a part of their government. They
25 want to know their government and what it is doing. They want

1 to provide input on matters which affect them directly or which
2 they are keenly interested in. Not all Montanans are interest-
3 ed in all phases of government. Most Montanans are, I submit,
4 interested in knowing about and participating in relatively a
5 limited scope of government, but when that time comes that Mon-
6 tanans wish to be known and heard they expect their government
7 to listen and preferably act. If they are received reasonably
8 and heard and the results explained, they will feel that they
9 have done their part in a democratic government. If they are
10 ignored or passed off indefinitely, they become frustrated and
11 demoralized in their government. It is hard to imagine how
12 the inclusion in our Constitution of a right to know and a
13 right to participate could do anything but improve in some
14 measure responsiveness of government officials to citizens and
15 improve in some measure citizens' confidence and satisfaction
16 in government. The government will be the better for it. The
17 people will be the better because of it. I resist the motion
18 to delete and I support the proposal of the Bill of Rights
19 Committee. Thank you, Mr. Chairman.

20 CHAIRMAN GRAYBILL: Mrs. Eck.

21 DELEGATE ECK: Mr. Chairman, I rise also to resist
22 the motion to delete and also to clarify one point that Mr.
23 Joyce made. We are not suggesting that the citizens partici-
24 pate in the decision. The decision is made by those who have
25 been elected to make that decision, or those who have been ap-

1 pointed to make the decision, but to participate in the delib-
2 erations prior to the decision-making. I have been a part of
3 this process for a good many years now and I have found that
4 while at first governmental agencies -- and I have participa-
5 ted both on the state and local level -- may be threatened by
6 having people around who are seemingly interfering in what
7 they are doing, that after they become accustomed to the fact
8 that there are citizens who are interested and who want to con-
9 tribute, that they really welcome this kind of participation.
10 I don't think--and I think it's unfortunate, but I don't really
11 feel that citizens are going to rush in great droves to par-
12 ticipate. We just haven't found that, but I think that if they
13 know when decisions are being made what topics are being con-
14 sidered that they will benefit from learning in advance what
15 their people think. I think this is true for individuals as
16 well as groups. I think that farm groups, chamber of commerce
17 groups, labor groups, as well as groups of interested citizens
18 can really make a valuable contribution to our government and
19 this is a contribution that is really free, and I think will
20 add, you know, at no additional expenses a considerable dimen-
21 sion to the kind of decisions that are being made. Thank you.

22 CHAIRMAN GRAYBILL: Mr. McKeon.

23 DELEGATE MCKEON: Thank you, Mr. Chairman. Mr.
24 Chairman, I rise in opposition to Mr. Joyce's motion to delete.
25 I think in this time, in this age, government is slowly slip-

1 ping away from the people and I think the people are beginning
2 to lack credibility in their government, and if a provision
3 such as this can bring the government closer to the people, if
4 a provision such as this can give the people more access to the
5 government, then, Mr. Chairman, I think it is most vital that
6 we accept this provision and for that reason I resist the mo-
7 tion by Mr. Joyce.

8 CHAIRMAN GRAYBILL: Mr. Garlington.

9 DELEGATE GARLINGTON: I certainly agree that we are
10 dealing here with ideals and it would be a great thing if we
11 could operate on the basis of idealism in the participation
12 in government. It has often been said here that the courts
13 are the ones who seem to louse all of this up and to find fault
14 with things. But, I want you all to remember that nothing
15 comes to court except when it is brought there by an aggrieved
16 citizen and you must also remember that in most of the oper-
17 ations of the government, there is a citizen who is aggrieved
18 as well as the one who is comforted by the action of govern-
19 ment. Take the simple business of zoning as it may occur in
20 individual communities. Zoning limits some owner's right to
21 use his property and he is the one who is aggrieved. Someone
22 else is happy that this good result came about by the operation
23 of government, and I want you all to realize that when you have
24 a very brief statement like this, unaccompanied by the hours
25 of discussion and the debate and the consideration that we are

1 having here, you just look at the little old words and here
2 now is some man, some property owner, who is individually ag-
3 grieved by an action of the zoning board and he goes to his
4 counsel and he says, what can I do to hold this up, and this
5 is how and where the case begins to get in court. And he goes
6 to his counsel and he says, now it says here that I had a
7 reasonable opportunity to participate in the operation of gov-
8 ernment before they take their zoning action, whatever it may
9 be, and I don't think I did. Now, there is no guideline here.
10 There isn't anything that says what reasonable participation
11 amounts to and there isn't anything to keep that man from
12 starting his case, holding up the operation of the zoning reg-
13 ulation, whatever it may be, while there is litigation as to
14 what transpired and whether he did or did not, in fact, have
15 a reasonable opportunity to participate. And, this may take
16 one year or two years and of course all he may think is that
17 if he can get it delayed long enough, he can somehow stall or
18 stymie this zoning action, whatever it may be. And, I ask you
19 all to look at this seriously now and realize how many dif-
20 ferent kinds of government affect the right of one individual
21 against the other where the aggrieved one is going to come in
22 and say, I didn't have the opportunity to participate so this
23 action that was taken does not live up to the Constitution and
24 I am therefore entitled to object. Now, one thing that you
25 have to remember always is that constitutional power is far

1 greater than any other power and sometimes I kind of fear that
2 we are getting a little intoxicated with the constitutional
3 power that we feel here, and this is why I am always counseling
4 caution in these things because these are irretrievable and
5 unmanageable. They are rigid and firm. And, if you were the
6 judge sitting there and you saw that it said in the constitu-
7 tion that the citizen has the right to participate in the
8 operation of government, what would you do about it if some
9 fellow came in and said, gee, they did this and I didn't have
10 a chance to know. They didn't write me a letter. They didn't
11 explain the things that they were doing. They didn't tell me
12 what they heard from these other people. I didn't know about
13 that. So on, and so on. Now, you multiply this and all the
14 myriad contacts between government and the individual and you
15 see what this is going to do, and I caution you again that we
16 should make sure that the language we write and we put in here
17 is so clear that these things are not suddenly thrust upon the
18 public in a way that creates disruption and dissatisfaction
19 with government instead of pleasure with it.

20 CHAIRMAN GRAYBILL: Mrs. Babcock.

21 DELEGATE BABCOCK: Mr. Chairman, I rise in support
22 of Mr. Joyce's motion. I believe that the legislature is a
23 deliberative body and I don't believe that every citizen can
24 rightfully participate in those deliberations. I feel that they
25 participate by electing the representatives to do the deliber-

1 ating. Thank you.

2 CHAIRMAN GRAYBILL: Mr. Vermillion.

3 DELEGATE VERMILLION: Mr. President, I came here with
4 one idea in mind, a kind of a philosophy, and that is that the
5 public and the people are actually the boss of the government
6 and the government is the servant of the people. You take that
7 in mind and take this section eight and replace the words, the
8 public, and make that the boss and make the government the em-
9 ployees, you can come up with a phrase like this: The boss
10 shall have the right to expect his employees to afford him
11 reasonable opportunity to participate in the operation of his
12 business. And that seems to me to be fairly basic and it seems
13 to me that we should keep section eight as it is and I oppose
14 Mr. Joyce.

15 CHAIRMAN GRAYBILL: Mr. Arbanas.

16 DELEGATE ARBANAS: I would like to speak in opposi-
17 tion to the amendment, and in reaction to my fellow committee-
18 man, Mr. Garlington, the fear that there is going to be a case
19 -- here's the zoning business and that the man will start a
20 case if he didn't have a chance to participate, it seems to me
21 I would like to see him have a chance to give a case if he
22 didn't have a chance to participate. So fundamental is it that
23 I would be more afraid of that right being infringed upon than
24 the delay of the action.

25 CHAIRMAN GRAYBILL: Mr. Holland.

1 DELEGATE HOLLAND: Mr. Chairman, I think I saw this
2 proposal in its original form as submitted by Mr. Foster and
3 others. At that time I didn't know what it means and I'm not
4 sure I do now. I was willing to go along with it when I heard
5 Mr. Dahood's explanation that this is a matter that the public
6 -- there would be reasonable opportunity for the public to find
7 out what is going on and they will have a reasonable opportu-
8 nity to express their views to the body that is deliberating or
9 taking the action. This seems reasonable to me. But, I do
10 think the language here, like Mr. Garlington says, is pretty
11 strong. We are talking about participation. Now, what notice
12 is going to be required? What right does this give rise to?
13 Does each body, at each step of the proceedings, notify all of
14 the public and make sure that all of the public somehow gets
15 the message and then they have the right to participate? And
16 what is participation? We are one hundred Delegates here. I
17 can't think of any body that has ever been more open, yet are
18 we letting the public participate? Are we letting the people
19 in the gallery come down and talk on this matter, express their
20 views in the open hearing? We've let them -- we've given them
21 notice of committee hearings. They could come in. They cer-
22 tainly have sent us numerous letters expressing their views.
23 Now, this is participation but must it go further? Must they
24 have a voice on the floor to participate? Must they have a
25 vote in the proceedings? All of this -- the language is so

1 loose that it can lead, as Mr. Garlington has pointed out, it
2 can lead to nothing but law suits. Earlier here, someone de-
3 signated the constitutionality as to whether or not all of the
4 -- in the title of a legislative act that all of the matters
5 covered therein should be expressed in the legislative act or
6 it becomes unconstitutional, and they spoke, well, that's be-
7 come nothing but a lawyer's feed bill, and I suppose it has to
8 some extent, but if that's a lawyer's feed bill, I'll guarantee
9 you this one will be because we won't even have to look up any
10 constitution. Any time a client comes in and says, there's a
11 statute against me or there's a law against me, we won't even
12 have to turn to the Constitution. We'll just say -- we'll just
13 say put somebody on there, find out somewhere in the legisla-
14 tive process where the public didn't have the right to proceed,
15 or to participate. Maybe it's some legislative step. The
16 hearing was had and there's no proof that the public was there
17 or there was room for the public to participate. All of this
18 can open a Pandora's Box and all of it can lead to good solid
19 legislation where the public had adequate notice and they had
20 adequate right to notify their representatives of their feel-
21 ings on the matter -- could still be defeated because of the
22 interpretation put on here by the courts, and the courts are
23 nothing but individual judges. In their desire to set aside
24 a law will rule that somehow or another the public couldn't
25 participate. I suggest that if the intentment is as Mr. Da-

1 hood says, then I can support it but I feel very much like Mr.
2 Joyce and Mr. Garlington. It can be pushed far beyond what the
3 committee on the Bill of Rights wants here and when it does,
4 then we are creating a monster, and I submit that Mr. Joyce's
5 motion should be accepted.

6 CHAIRMAN GRAYBILL: Very well. The Chair would like
7 to get a vote on at least Mr. Joyce's motion here before we
8 go to dinner, so the Chair will entertain further debate.
9 Please be brief.

10 DELEGATE BLAYLOCK: I'm always brief, Mr. President.

11 CHAIRMAN GRAYBILL: That's why I'm calling on you,
12 Mr. Blaylock.

13 (Laughter)

14 DELEGATE BLAYLOCK: Mr. President, I believe it was
15 Mr. Davis who put in the word, reasonable, in here and when
16 he did that, I thought I saw a vast look of relief spread
17 across all of our barristers' faces, and so if we -- he said
18 it was defined, they know what that word means. It says
19 reasonable opportunity for citizen participation, and if we go
20 back to section one, which this body has adopted, it says:
21 All political power is vested in and derived from the people.
22 All government of right originates with the people, is founded
23 upon their will only, and is instituted solely for the good
24 of the whole. So, I submit, Mr. President, that a citizen
25 should have the right to participate in that government.

1 CHAIRMAN GRAYBILL: Mrs. Bates.

2 DELEGATE BATES: Mr. Chairman, I would like to say
3 that I like the theory of this but in working with a group of
4 people that has a majority of lay people, this is the compre-
5 hensive health planning, I can see all kinds of citizen parti-
6 cipation. But, in looking at this, I'm wondering if we aren't
7 looking a little deeper into a policy-making and even in our
8 organization, I wonder if there was a decision on food stamps
9 within a county or changing the way it was handled, how far
10 can we go, and the words here would make me think this was a
11 lawyer's dream and therefore I would speak in opposition to
12 this.

13 CHAIRMAN GRAYBILL: Mr. Harbaugh.

14 DELEGATE HARBAUGH: I'll be brief, too. There are
15 a couple of things that I'd like to point out that I don't
16 think have been said yet. I'd like to speak basically in
17 opposition to the motion to delete because I think we need
18 this sort of section, and the amendment which I offered does
19 not take this out of the realm of political theory. It still
20 is in the realm of political theory. Also, it seems to me,
21 secondly, that the title of this article is very misleading
22 if we adopt the article as it is presently written. What is
23 really offered to us under this title of right of participation
24 is a right to expect something, not a right to participate, and
25 I think we want a right to participate. Perhaps this is a

1 Pandora's Box. If it's a Pandora's Box, maybe we'd better open
2 it and see what's in it. So, I would resist the motion to de-
3 lete.

4 CHAIRMAN GRAYBILL: Mr. Studer.

5 DELEGATE STUDER: Mr. President, I come up here as
6 a jurymen and I've made up my decision. I think that if this
7 thing is a very strong article and it can be interpreted as
8 Mr. Garlington and Holland said, it could be very dangerous
9 and as other Delegates have said that it doesn't mean anything
10 the way it's written, either way it's a bad deal. I would
11 like to go for Mr. Joyce's amendment.

12 CHAIRMAN GRAYBILL: Mr. Dahood.

13 DELEGATE DAHOOD: Mr. Chairman, if this particular
14 section could be interpreted as Mr. Garlington has suggested,
15 as Mr. Holland has suggested, if it doesn't mean anything, as
16 another Delegate has suggested, then it ought to go out. But
17 that isn't true. The article states -- the section states
18 very clearly that we are talking about governmental agencies
19 and the rationale on page twenty-one says as follows: It is
20 hoped that this provision will play a role in reversing the
21 dissatisfactions increasingly expressed regarding bureaucratic
22 authority insulated from public scrutiny and participation.
23 The intent of this particular section is to make sure that
24 these governmental agencies, these bureaus, are going to be
25 more responsible to the individual citizen. We are talking

1 particularly about the rule and the regulation that they make
2 to implement the law that is given to them by the legislature
3 which directly affects each and every one of us, and we think
4 that when those rules and those regulations are made that are
5 going to affect our everyday lives, that we should have the
6 right to participate. Before the Constitutional Convention
7 accepts a proposal, there is a public hearing. Before the
8 legislature passes a law, there is a public hearing. And
9 before a governmental agency passes a rule or regulation that
10 has the force and effect of law, there ought to be a public
11 hearing. Now, that's what we're talking about. The language
12 is too broad? How about freedom of speech and how about free-
13 dom of religion? Can anything be broader than that? And yet
14 there has to be restrictions on those particular rights and
15 the books of law are filled with the restrictions that are
16 necessary to make sure that those rights are realistic rights
17 within a free society. We submit to you that with the debates
18 that have taken place on this floor here and now, and with the
19 journal and the record that is made, there could be no mistake
20 as to what is intended by section eight and the legislature
21 will carry it out, and the legislature will set guidelines,
22 and when governmental agencies--and I underscore that--are
23 going to set forth rules and regulations, make rules and reg-
24 ulations that govern all of us, unlike what they have done in
25 the past with callousness and indifference to the American and

1 Montana citizens, they are going to have to give notice that
2 they are going to do this and they are going to have to listen
3 to the citizen before they pass that type of rule and regula-
4 tion that unquestionably has the force and effect of law. I
5 oppose the motion to delete.

6 DELEGATE JOYCE: May I close?

7 CHAIRMAN GRAYBILL: Apparently you're not going to
8 be able to close. I see Mr. Wilson up.

9 (Laughter)

10 DELEGATE WILSON: Mr. President.

11 CHAIRMAN GRAYBILL: Mr. Wilson.

12 DELEGATE WILSON: I rise with a great deal of appre-
13 hension. I have a lot of respect for the different lawyers
14 that have approached this subject, and I see that they cannot
15 agree. There's a lot of different opinions, and I propose to
16 the rest of us people who are just non-lawyers, citizens, that
17 perhaps we're opening up a field for a wide range of litiga-
18 tion. If they can't decide among themselves now, we're in
19 trouble.

20 CHAIRMAN GRAYBILL: Mrs. Robinson.

21 DELEGATE ROBINSON: Mr. President, I would just like
22 to add that if we have to base our decisions on only those
23 things that the lawyers can agree on, we'll never adopt any
24 of this Constitution.

25 (Laughter)

1 CHAIRMAN GRAYBILL: Mr. Joyce, you may close.

2 DELEGATE JOYCE: Mr. Chairman, I suppose that in

3 closing, it's a matter of philosophy as to what should be in

4 a constitution. I happen to believe that constitutions should

5 not contain any sermons. I happen to believe that if you are

6 going to give people rights, they ought to have rights that are

7 enforceable in the courts. I don't read this section that it

8 only pertains to the rule making power. I submit that we

9 already have an administrative procedure act by statute that

10 if there is -- it is desirable for the people to participate

11 in government that the legislature ought to set down rules and

12 guidelines, that the legislature does have that constitutional

13 power now. It seems to me that writing anything into a con-

14 stitution that abrogates or makes unfeasible the exercise of

15 -- the reasonable exercise of that power will do more harm

16 than good. I submit that just writing platitudes into the

17 Constitution will do more harm than good and, in reply to my

18 distinguished Delegate, Mrs. Robinson, if us lawyers can't

19 agree it seems it is an anomaly here that us lawyers here are

20 trying to keep away from having a field day with the section

21 while the rest of you people are trying to force it upon us,

22 and that does seem anomalous to me, and it seems, I might sub-

23 mit to you that perhaps because we do practice law and we are

24 involved in courts and we are trying to enforce rights in

25 courts, that maybe we do know something about what constitu-

1 tions are all about. And, of course, those of you who think
2 we do not, even though we come from every different kind of
3 political persuasion, why, that's just a deficiency, I guess,
4 in the public relations of the legal profession. But, notwith-
5 standing, I still reiterate that this section as written will
6 do more harm than good and I hope that my motion to delete
7 passes.

8 CHAIRMAN GRAYBILL: Very well, I trust you want a
9 roll call vote.

10 (No response)

11 CHAIRMAN GRAYBILL: No?

12 DELEGATES: Yes.

13 CHAIRMAN GRAYBILL: Yes? All right. So many as
14 shall be in favor of Mr. Joyce's motion, which is to strike
15 section eight in its entirety, vote Aye; so many as shall be
16 opposed, vote No. Has every Delegate voted?

17 (No response)

18 CHAIRMAN GRAYBILL: Does any Delegate wish to change
19 his vote?

20 (No response)

21 CHAIRMAN GRAYBILL: The vote is closed. Please take
22 the vote.

23 Aasheim	-	Nay	Arbanas	-	Nay
24 Anderson, J.	-	Aye	Arness	-	Absent
25 Anderson, O.	-	Absent	Aronow	-	Nay

1	Artz	-	Nay	Driscoll	-	Aye
2	Ask	-	Aye	Drum	-	Absent
3	Babcock	-	Aye	Eck	-	Nay
4	Barnard	-	Aye	Erdmann	-	Nay
5	Bates	-	Aye	Eskildsen	-	Excused
6	Belcher	-	Excused	Etchart	-	Nay
7	Berg	-	Aye	Felt	-	Absent
8	Berthelson	-	Nay	Foster	-	Nay
9	Blaylock	-	Nay	Furlong	-	Nay
10	Blend	-	Nay	Garlington	-	Aye
11	Bowman	-	Aye	Gysler	-	Aye
12	Brazier	-	Aye	Habedank	-	Absent
13	Brown	-	Aye	Hanson, R. S.	-	Nay
14	Bugbee	-	Nay	Hanson, R.	-	Nay
15	Burkhardt	-	Nay	Harbaugh	-	Nay
16	Cain	-	Nay	Harlow	-	Nay
17	Campbell	-	Nay	Harper	-	Nay
18	Cate	-	Nay	Harrington	-	Nay
19	Champoux	-	Nay	Heliker	-	Nay
20	Choate	-	Aye	Holland	-	Aye
21	Conover	-	Nay	Jacobsen	-	Aye
22	Cross	-	Nay	James	-	Nay
23	Dahood	-	Nay	Johnson	-	Aye
24	Davis	-	Aye	Joyce	-	Aye
25	Delaney	-	Aye	Kamhoot	-	Aye

1	Kelleher	-	Nay	Rollins	-	Aye
2	Leuthold	-	Nay	Romney	-	Nay
3	Loendorf	-	Nay	Rygg	-	Aye
4	Lorello	-	Nay	Scanlin	-	Nay
5	Mahoney	-	Aye	Schiltz	-	Nay
6	Mansfield	-	Nay	Siderius	-	Nay
7	Martin	-	Aye	Simon	-	Aye
8	McCarvel	-	Nay	Skari	-	Nay
9	McDonough	-	Nay	Sparks	-	Nay
10	McKeon	-	Nay	Speer	-	Nay
11	McNeil	-	Nay	Studer	-	Aye
12	Melvin	-	Aye	Sullivan	-	Nay
13	Monroe	-	Nay	Swanberg	-	Aye
14	Murray	-	Nay	Toole	-	Aye
15	Noble	-	Aye	Van Buskirk	-	Nay
16	Nutting	-	Excused	Vermillion	-	Nay
17	Payne	-	Nay	Wagner	-	Absent
18	Pemberton	-	Aye	Ward	-	Aye
19	Rebal	-	Aye	Warden	-	Aye
20	Reichert	-	Nay	Wilson	-	Aye
21	Robinson	-	Nay	Woodmansey	-	Nay
22	Roeder	-	Aye	Mr. Chairman	-	Aye

23 CLERK HANSON: Mr. Chairman, thirty-seven Delegates
 24 voting Aye, fifty-four voting No.

25 CHAIRMAN GRAYBILL: Fifty-four Delegates voting No

1 and thirty-seven Aye, Mr. Joyce's motion fails.

2 Mr. Murray.

3 DELEGATE MURRAY: Mr. Chairman, I move the committee
4 recess until the hour of eight P.M., this day.

5 CHAIRMAN GRAYBILL: The motion is to recess until
6 eight P.M. All in favor say Aye.

7 DELEGATES: Aye.

8 CHAIRMAN GRAYBILL: Opposed, No.

9 DELEGATES: (No audible response)

10 CHAIRMAN GRAYBILL: So ordered.

11

12 (Committee in recess from 5:50 p.m.
13 until 8:02 o'clock, P.M.)

14 CHAIRMAN GRAYBILL: The committee will come to order.
15 Mr. Vermillion, would you shut the doors for us. Members of
16 the committee, before recess we were discussing section eight
17 on page five of the bill of rights article, and this article
18 was first amended by Mr. Davis by striking the words, every
19 feasible, and putting in the word, reasonable. I see no rea-
20 son to go behind that. Next it was amended by Mr. -- an
21 amendment was proposed by Mr. Harbaugh, striking the first
22 phrase--the public shall have the right to expect--and making
23 the phrase read: Governmental agencies shall afford reason-
24 able opportunity for citizen participation. Then Mr. Joyce
25 made his motion to strike, which was defeated. Unless I hear

1 objection from the floor, I will consider Mr. Harbaugh's motion
2 as still entertained; namely, that the phrase would read: Gov-
3 ernmental agencies shall afford reasonable opportunity for
4 citizen participation in the operation of the government prior
5 to the final decision, and the matter would be open for further
6 amendments. Is there any objection from the floor to starting
7 at that point?

8 (No response)

9 CHAIRMAN GRAYBILL: Very well, we'll start at that
10 point, Mr. Harbaugh, with your amendment under discussion.
11 Do you care to rephrase it or at least discuss it?

12 DELEGATE HARBAUGH: No, I was going to close if --

13 CHAIRMAN GRAYBILL: Well, let's not close too quick-
14 ly. There have been a lot of pencils out over the dinner hour.
15 Mr. Berg.

16 DELEGATE BERG: Would Mr. Dahood yield to a ques-
17 tion?

18 CHAIRMAN GRAYBILL: Mr. Dahood?

19 DELEGATE DAHOOD: I yield, Mr. Chairman.

20 DELEGATE BERG: And would you yield to a series of
21 three or four questions?

22 DELEGATE DAHOOD: I will yield to a series of three
23 or four questions, Mr. Berg.

24 DELEGATE BERG: Well, Mr. Dahood, I notice that the
25 article as now proposed, or the section says, for citizen

1 participation in the operation of government prior to final
2 decision. Do you mean, by government, all branches of govern-
3 ment?

4 DELEGATE DAHOOD: I do not. I mean, by government,
5 those branches that are going to make rules and regulations
6 that have the force and effect of law with respect to the
7 average citizen. That does not include the judiciary, Mr.
8 Berg, obviously.

9 DELEGATE BERG: This is your construction.

10 DELEGATE DAHOOD: That is my construction.

11 DELEGATE BERG: Is there any such construction in
12 your comment?

13 DELEGATE DAHOOD: In the comment there is no such
14 construction in the comment but it would seem to me, in my
15 judgment, that that is the only construction that can be given
16 that is reasonable.

17 DELEGATE BERG: Thank you, Mr. Dahood. I am sorry
18 that I have to disagree with my colleague, Mr. Dahood.

19 DELEGATE DAHOOD: You have three questions to go.

20 (Laughter)

21 DELEGATE BERG: Well, I'm through. I'm through with
22 my questions. I have your answers. I don't think that it's
23 rational or reasonable to describe government and not include
24 all branches of government. I don't see how you can arrive
25 at the interpretation of the word government and exclude from

1 it one branch and include others. If it does include judiciary,
2 as Mr. Dahood assures us it does not, but if it does you run
3 into a very peculiar problem. For example, if in the course
4 of a trial with a jury you have litigants there and you have
5 people in the public court room, sitting back as observers.
6 These are the people, now, who, under the terms of this--at
7 least in my construction--would have a right of some kind to
8 participate in the operation of that branch of government be-
9 fore a final decision is reached. I cannot conceive of what
10 their participation would be. I don't know whether it might
11 include suggesting instructions to the court that the jury
12 should be given in the deliberation of this case. Or without
13 a jury, whether the participation might include the giving of
14 the findings of fact and proposed conclusions of law. I don't
15 understand what this word, participation in the operation of
16 government, means especially as it could relate to the judi-
17 ciary.

18 DELEGATE DAHOOD: May I respond now, Mr. Berg?

19 CHAIRMAN GRAYBILL: Mr. Dahood.

20 DELEGATE DAHOOD: Mr. Chairman.

21 CHAIRMAN GRAYBILL: Mr. Dahood.

22 DELEGATE DAHOOD: First of all, with respect to Mr.
23 Berg's comment, which I know is a comment we should have be-
24 fore us, as I indicated earlier I think this dialogue is very
25 meaningful and the questions I think are meritorious. I once

1 again want to urge all the Delegates to look at the term, gov-
2 ernmental agencies, which is the key to constructing that par-
3 ticular section. Governmental agencies, I do not think can be
4 defined to include the court. Participation -- citizen parti-
5 cipation in the operation of government, I think the comment
6 would tend to indicate that what we have in mind is that before
7 decisions are made that affect the citizens of Montana, the
8 general welfare of the citizens, that the citizen will have a
9 right to express his opinion and in that way participate in the
10 operation of government that leads to that final decision point.
11 And, I do think that we should all recognize that when we are
12 dealing with constitutional doctrine, which must necessarily be
13 phrased in broad language, that we are going to have to deal
14 with a generality and then to bring it down to a specific point
15 we have to have some regard for the reference within which
16 that generality is framed and we would expect, of course, that
17 the legislature would outline for us the guideline for partici-
18 pation in order that we might achieve the objective sought.
19 Once again I want to point out, we have in mind the government-
20 al agencies that are miniature legislatures who put together
21 rules and regulations that affect us all, and of course I could
22 give you many examples of what I am talking about and I'm sure
23 the lawyers are well aware of it, and I submit once again that
24 section eight advances the rights of the citizen of the state
25 of Montana and is necessary. Thank you, Mr. Chairman.

1 CHAIRMAN GRAYBILL: Mr. Harbaugh.

2 DELEGATE HARBAUGH: Mr. Chairman, I am very much in
3 accord with the whole intent here of this section and as I look
4 at it more closely, it seems to me that it is clear that what
5 the section speaks about is the right of participation in re-
6 gard to governmental agencies, as I have amended it. But, I
7 am afraid that if we say the public shall have the right to
8 expect, included with the rest of the language, that really
9 we're not getting at the heart of the problem. It seems to me
10 that if we really want to have a right to participate that then
11 we ought to spell that out, that this is the right that we're
12 specifying, not a right to expect to participate. It seems to
13 me this removes the whole thing one step further from those
14 people whom we would like to see become involved in these
15 things, and I have no quarrel with the expressed intent as it
16 is spelled out in the commentary on this section. It says in
17 part it is also a commitment at the level of fundamental law
18 to seek structures, rules and procedures that maximize the ac-
19 cess of citizens to the decision-making institutions of state
20 government, and I am in full accord with that, but I would just
21 hope that we get down to the place where we actually set forth
22 the right to participate, not set forth the right to expect to
23 participate.

24 CHAIRMAN GRAYBILL: Mr. Aronow.

25 DELEGATE ARONOW: Mr. Chairman, I have a substitute

1 motion that I would like to present, and perhaps the Chair would
2 read the substitute motion.

3 CHAIRMAN GRAYBILL: It's short. I'll read it. Mr.
4 Aronow's substitute motion is, substitute the following lang-
5 uage in place of the present section eight: Reasonable oppor-
6 tunity shall be afforded to the public to appear and testify
7 before all governmental agencies exercising the power to adopt
8 rules and regulations having the force of law, which opportun-
9 ity shall be exercised under circumstances prescribed by law.
10 Now, I'll read that more slowly in case you want to write it
11 down. Reasonable opportunity shall be afforded to the public
12 to appear and testify before all governmental agencies exer-
13 cising the power to adopt rules and regulations having the
14 force of law, which opportunity shall be exercised under cir-
15 cumstances prescribed by law.

16 Mr. Aronow.

17 DELEGATE ARONOW: Mr. Chairman, I have listened to
18 this debate and I think a matter of this sort has a proper
19 place in the Constitution and I am greatly impressed with the
20 comments: It is hoped that this provision will play a role
21 in reversing the dissatisfactions increasingly expressed re-
22 garding bureaucratic authority insulated from public scrutiny
23 and participation. We have in the Constitution the provision
24 that the legislature shall act openly with public information.
25 We have provisions that no one shall be denied access to the

1 courts. Now, we have the problem of the appointive bureaucrat-
2 ic organizations of state government. As you all realize, and
3 I have realized for many years, that the appointee does not
4 owe his allegiance to the public. He owes it to the appointive
5 authority, and this is the problem that we are trying to get to,
6 I believe. I realize that the committee has spent a great deal
7 of time and heard a great deal of testimony. We have had a
8 considerable debate and I do believe that this provision will
9 have the good effect that we want upon the processes of gov-
10 ernment which are not elective; that is, upon the appointive
11 personnel that makes the rules and regulations that affect the
12 lives of all of us. And it will make these appointive people,
13 hopefully, a little more responsive to the needs of the public
14 rather than of their appointive authority. I trust that this
15 proposed amendment will be favored by this Convention.

16 CHAIRMAN GRAYBILL: Mr. Burkhardt.

17 DELEGATE BURKHARDT: Mr. Chairman, I rise in oppo-
18 sition, not to the thought which Mr. Aronow has put into his
19 statement, but to the form in which it is expressed. It seems
20 to me that the bill of rights is really a poetic statement and
21 is not to be confused with the terse and hard language of the
22 statute. Robert Frost has said, and I think perhaps has said
23 it for generations, that a poem is a momentary stay against
24 confusion and I have an idea that Frost may be quoted as we
25 now quote Shakespeare sometimes. He may be quoted three and

1 four hundred years hence. He has succeeded on numerous oc-
2 casions in stating in simple ways the hopes and dreams of peo-
3 ple and their experience and it will stand. I think that those
4 who write a bill of rights have something of the same goal in
5 mind. They don't want a precise, hidebound kind of inescapable
6 statement. That has to be put into the statutes. What they
7 are looking for is the soul of a document, the living, growing
8 reality, and I think this group has demonstrated soul, not only
9 in this section but in some of the sections just ahead of us--
10 the right to know, the right to privacy, which I hope we'll get
11 to eventually. But, it seems to me that what we are dealing
12 with here is an expression of poetry which, nevertheless, is
13 kind of a safety net under the high wire in the circus and
14 while it may not serve every situation and there may be an
15 occasion of blatant abuse when the safety net is needed, and
16 it will be there and it will serve a very important function.
17 Therefore, I would like to get to the language of the original
18 committee for, while it is somewhat imprecise, it's the kind of
19 poetry that a court that's concerned with justice can work with
20 and the future can find hope in. Thank you.

21 CHAIRMAN GRAYBILL: Is there other discussion of Mr.
22 Aronow's proposed language?

23 (No response)

24 CHAIRMAN GRAYBILL: Very well, the issue is on Mr.
25 Aronow's substitute motion to amend section eight by deleting

1 it and putting in the language: Reasonable opportunity shall
2 be afforded to the public to appear and testify before all
3 governmental agencies exercising the power to adopt rules and
4 regulations having the force of law, which opportunity shall
5 be exercised under circumstances prescribed by law. All in
6 favor of that substitute motion, say Aye.

7 DELEGATES: Aye.

8 CHAIRMAN GRAYBILL: Opposed, No.

9 DELEGATES: No.

10 UNIDENTIFIED DELEGATES: Division.

11 CHAIRMAN GRAYBILL: All in favor, use the voting
12 machines to vote Aye; all opposed, No. Has every Delegate
13 voted?

14 (No response)

15 CHAIRMAN GRAYBILL: Does any Delegate wish to change
16 his vote?

17 (No response)

18 CHAIRMAN GRAYBILL: Very well, fifty-two having
19 voted No and thirty-seven having voted Aye, Mr. Aronow's motion
20 fails. Very well, we are debating Mr. Harbaugh's language:
21 Governmental agencies shall afford reasonable opportunity for
22 citizen participation in the operation of the agencies prior
23 to the final decision. Is there further discussion?

24 Mr. McNeil.

25 DELEGATE MCNEIL: Mr. Chairman, I move to amend the

1 amendment on line twenty-eight, page five, to substitute the
2 word, agencies, for the word, government.

3 CHAIRMAN GRAYBILL: Now would you state your line
4 again? Are you on page five?

5 DELEGATE McNEIL: Page five, line twenty-eight. De-
6 lete the word, government, and insert the word, agencies.

7 CHAIRMAN GRAYBILL: Very well, Mr. McNeil wants to
8 substitute the word, agencies --

9 DELEGATE McNEIL: Mr. Chairman.

10 CHAIRMAN GRAYBILL: Just a minute. It's the second
11 time the word is -- the last line of subsection eight, so that
12 it reads: in the operation of the agency prior to the final
13 decision.

14 DELEGATE McNeil: Yes.

15 CHAIRMAN GRAYBILL: Mr. McNeil.

16 DELEGATE McNEIL: Mr. Chairman, I believe this will
17 clear up the ambiguity that was concerning Delegate Berg. I
18 think it will reach to the heart of what the committee was
19 really looking for, and that is making these bureaucratic
20 agencies responsive to the people. It will eliminate any ques-
21 tion that the people are not going to participate by way of
22 vote in terms of the legislature or the supreme court or any-
23 thing else, and will clearly pinpoint the fact that it is the
24 governmental agencies that are the target of this section de-
25 signed to permit the citizens to participate therein.

1 CHAIRMAN GRAYBILL: Mr. Berg

2 DELEGATE BERG: Mr. Chairman, I heartily concur.

3 CHAIRMAN GRAYBILL: Mrs. Eck.

4 DELEGATE ECK: So do I. Mr. Chairman, I might prefer
5 just for clarity, and I don't know why it sounds better to me,
6 but to have governmental agencies rather than agencies. Would
7 that -- I don't know if it makes any difference.

8 CHAIRMAN GRAYBILL: We already have that on the
9 first line.

10 DELEGATE ECK: Yes. I guess maybe the agencies would
11 be satisfactory and I think that this is really the intent of
12 the statement and I think that by eliminating government, it
13 eliminates things like the judicial, which we certainly didn't
14 intend to refer to.

15 CHAIRMAN GRAYBILL: Mr. McNeil, a question has arisen.
16 Governmental agencies, plural, shall afford reasonable oppor-
17 tunity for citizen participation in the operation of the agency
18 or the agencies, i-e-s? I know Style can do that but --

19 DELEGATE MCNEIL: If that isn't within the province
20 of Style and Drafting, if the first part of the sentence is to
21 be governmental agencies, then it should read--participation
22 in the operation of the agencies prior to the final decision.

23 CHAIRMAN GRAYBILL: All right, it can be the--we'll
24 make it plural in both cases. All right, is there further
25 discussion?

1 Mr. Heliker.

2 DELEGATE HELIKER: Would Mr. McNeil yield?

3 CHAIRMAN GRAYBILL: Mr. McNeil, will you yield?

4 DELEGATE MCNEIL: I yield.

5 DELEGATE HELIKER: Just as a matter of curiosity,
6 Mr. McNeil, what is a governmental agency?

7 DELEGATE MCNEIL: I don't have a precise answer to
8 that. I think it is what the committee intended to reach with
9 this and that is appointive commissions, bureaus, and so forth,
10 to the exclusion of the judiciary and the legislature, but I
11 don't have a precise answer to that question.

12 DELEGATE HELIKER: Will Mr. Dahood yield?

13 DELEGATE DAHOOD: I yield, Mr. Chairman.

14 DELEGATE HELIKER: Does it exclude legislative agen-
15 cies of local government?

16 DELEGATE DAHOOD: Legislative agencies of local gov-
17 ernment?

18 DELEGATE HELIKER: City councils and so forth?

19 DELEGATE DAHOOD: No, I would not think that it does
20 that, but I think what we're trying to get at is the type of
21 bureau within the governmental structure. If we have agreed
22 in that fashion, we are going to be talking about whatever
23 would constitute a governmental agency. I suppose it would
24 apply to some of the agencies that may be local. I think a
25 lot would depend on how they're constructed and by whom they

1 are appointed.

2 DELEGATE HELIKER: Do they have to be appointed?

3 DELEGATE DAHOOD: Do they have to be?

4 DELEGATE HELIKER: Yes.

5 CHAIRMAN GRAYBILL: His question is, Mr. Dahood, is
6 the city council a governmental agency?

7 DELEGATE DAHOOD: The city council, in my judgment,
8 would not be the type of governmental agency that is contem-
9 plated by section eight.

10 DELEGATE HELIKER: May I ask -- inquire further?
11 Then this applies only to appointive agencies?

12 DELEGATE DAHOOD: Basically, that is true because a
13 city council, for example, just like a legislature, is not
14 going to act without regard to citizen participation. They
15 are not going to do it but the governmental agencies that are
16 not elected, that are appointed, that function to carry out
17 the laws that are passed are the ones that, of course, will
18 enact rules and regulations and make the decisions that affect
19 people with the effect of law without sometimes of having any
20 regard for citizen participation.

21 DELEGATE HELIKER: Thank you.

22 CHAIRMAN GRAYBILL: Very well, the question arises
23 on Mr. McNeil's amendment in line twenty-eight of section
24 eight to change the word, government, to the word, agencies,
25 so that the phrase reads: to afford reasonable opportunity

1 for citizen participation in the operation of the agencies
2 prior to the final decision. So many as shall be in favor of
3 Mr. McNeil's amendment, say Aye.

4 DELEGATES: Aye.

5 CHAIRMAN GRAYBILL: Opposed, No.

6 DELEGATES: No.

7 CHAIRMAN GRAYBILL: His amendment is adopted. Now,
8 we are back on Mr. Harbaugh's basic amendment to make it:
9 Governmental agencies shall afford reasonable opportunity, and
10 to strike the first few words. So many as shall be in favor
11 of Mr. Harbaugh's motion that we strike the first phrase and
12 start the sentence with: Governmental agencies shall -- so
13 many as are in favor of that motion, please say Aye.

14 DELEGATES: Aye.

15 CHAIRMAN GRAYBILL: Opposed, No.

16 DELEGATES: No.

17 CHAIRMAN GRAYBILL: The Chair is in doubt. All in
18 favor, please vote Aye on the voting machine -- of the Harbaugh
19 amendment. Those opposed, vote No. That strikes the first
20 phrase, the public shall have the right to expect. Has every
21 Delegate voted?

22 (No response)

23 CHAIRMAN GRAYBILL: Does any Delegate wish to change
24 his vote?

25 (No response)

1 CHAIRMAN GRAYBILL: The vote is fifty-eight against
2 and thirty for, so the motion is defeated. We are now back on
3 the basic language of section eight: The public shall have the
4 right to expect governmental agencies to afford reasonable
5 opportunity for citizen participation in the operation of the
6 agencies prior to the final decision. Mr. McNeil's amendment
7 and Mr. Davis' amendment having passed, they will be incorpor-
8 ated in the language we are debating, so it says reasonable
9 and it says agencies, but otherwise it's the way the committee
10 wrote it.

11 Mr. Davis.

12 DELEGATE DAVIS: I move to amend section eight by
13 adding to the end of the sentence after the word, decision:
14 as provided by law.

15 Mr. President.

16 CHAIRMAN GRAYBILL: Mr. Davis moves to add on line
17 twenty-eight after the word, final decision, the phrase, as
18 provided by law, so that it reads: to afford reasonable oppor-
19 tunity for citizen participation in the operation of the agen-
20 cies prior to the final decision, as provided by law.

21 Mr. Davis.

22 DELEGATE DAVIS: In Mr. Dahood's discussion of this
23 several times he said he expected the legislature to establish
24 guidelines for this, and it's inferred that the legislature
25 would, and so forth. I think it would be clearer to put in the

1 fact that we want the legislature to establish some guidelines
2 rather than leave it in doubt because when it comes time to in-
3 terpret this, the journal may not be published and all the
4 statements that are made here on the floor, so I think this
5 would probably solve a problem in this regard instead of leav-
6 ing it by inference.

7 CHAIRMAN GRAYBILL: Mr. McDonough.

8 DELEGATE McDONOUGH: Mr. Chairman, I support Mr.
9 Davis' amendment. It is probably already provided in the ad-
10 ministrative procedures act, which I'm not too familiar with,
11 but at least this will prevent the multiplicity -- just a lot
12 of law suits over the interpretation of this section because
13 the notice of public participation has to be provided by law.

14 CHAIRMAN GRAYBILL: Mrs. Eck.

15 DELEGATE ECK: Mr. Chairman, I don't resist these
16 motions at all. It has been my understanding, and I'm not sure
17 I'm right about this, that almost all of these sections in-
18 ferred as provided by law. In other words, we set up a right
19 and infer that laws will be provided to implement them. But,
20 I think maybe I would like to hear from Mr. Dahood on this.
21 Thank you.

22 CHAIRMAN GRAYBILL: Mr. Dahood.

23 DELEGATE DAHOOD: Mr. Chairman, I was not opposed to
24 the amendment. I think it is implicit within it. As we have
25 indicated in section eight, we are dealing with governmental

1 agencies and perhaps to more clearly respond to a previous ques-
2 tion, agencies, of course, has to be derived from the generic
3 term of agent. We have to have a principle and an agent. We
4 are referring to those agencies, those boards, those bureaus
5 that are created by the legislature or by a city council, and
6 of course the governmental unit that creates these agencies
7 probably should be the one necessarily to set down specific
8 guidelines and I think that certainly is in accord with our
9 intent that the legislature shall set down some uniform rule
10 or set of rules by which these agencies must provide for gov-
11 ernment participation, so I think -- on behalf of the committee
12 I think I can safely state that we would have no objection to
13 that amendment.

14 CHAIRMAN GRAYBILL: Very well, the issue arises on
15 Mr. Davis' motion to add the phrase, as provided by law, to
16 the end of section eight. All in favor of that amendment, say
17 Aye.

18 DELEGATES: Aye.

19 CHAIRMAN GRAYBILL: Opposed, No.

20 DELEGATES: No.

21 CHAIRMAN GRAYBILL: It's adopted. Are there further
22 amendments to section eight, or is there further discussion?

23 (No response)

24 CHAIRMAN GRAYBILL: Very well, members of the commit-
25 tee, you have before you on the recommendation of Mrs. Eck --

1 Mr. Romney.

2 DELEGATE ROMNEY: I wish to offer a substitute motion.

3 CHAIRMAN GRAYBILL: Very well.

4 DELEGATE ROMNEY: Citizens shall possess the right
5 to attend meetings of governmental units charged with the re-
6 sponsibility of administration of statutes and regulations.
7 Such attendance shall guarantee hearing the deliberations at
8 meetings, view the proceedings, and accept the invitation to
9 offer suggestions.

10 CHAIRMAN GRAYBILL: Will the Page go and get the
11 language from Mr. Romney? All right, I'll read this carefully
12 for you, for those of you who want to take it down. This is a
13 motion -- a substitute motion to delete section eight and add
14 this language: Citizens shall possess the right to attend
15 meetings of governmental units charged with the responsibility
16 of administration of statutes and regulations, period. Such
17 attendance shall guarantee hearing the deliberations at
18 meetings, -- I can't read the next word, Mr. Romney.

19 DELEGATE ROMNEY: View.

20 CHAIRMAN GRAYBILL: -- view the proceedings -- view,
21 I guess it is. Such attendance shall guarantee hearing the
22 deliberations at meetings, comma, view the proceedings -- it
23 probably should be viewing the proceedings, comma, and accept-
24 ing the initiative -- initiation -- the initiative to offer
25 suggestions.

1 DELEGATE ROMNEY: Invitation.

2 CHAIRMAN GRAYBILL: All right, suggesting the invi-
3 tation to offer suggestions -- and accepting the invitation to
4 offer suggestions. Such attendance shall guarantee hearing the
5 deliberations at meetings, viewing the proceedings, and accept-
6 ing the invitation to offer suggestions. Mr. Romney, do you
7 care to discuss it further?

8 DELEGATE ROMNEY: Mr. Chairman, it is merely another
9 attempt to solve this enigma. Otherwise, I might say (indis-
10 tinguishable Latin word) a loquitor.

11 (Laughter)

12 CHAIRMAN GRAYBILL: Or perhaps caveat emptor?

13 (Laughter)

14 CHAIRMAN GRAYBILL: All right, is there further dis-
15 cussion?

16 (No response)

17 CHAIRMAN GRAYBILL: If not, the issue is on Mr. Rom-
18 ney's motion -- substitute motion to delete section eight and
19 put in place of it language which says: Citizens shall pos-
20 sess the right to attend meetings of governmental units charged
21 with the responsibility of administration of statutes and reg-
22 ulations. Such attendance shall guarantee hearing the delib-
23 erations at meetings, viewing the proceedings, and accept-
24 ing the invitation to offer suggestions. So many as shall be
25 in favor of Mr. Romney's amendment, say Aye.

1 DELEGATES: Aye.

2 CHAIRMAN GRAYBILL: Opposed, No.

3 DELEGATES: No.

4 CHAIRMAN GRAYBILL: It's defeated. Very well, we
5 are debating section eight, as amended. Is there other dis-
6 cussion?

7 (No response)

8 CHAIRMAN GRAYBILL: The amendments involve the word,
9 reasonably, and the word, agencies. Members of the committee,
10 you have before you on the recommendation of Mrs. Eck that when
11 this committee does arise and report, after having had under
12 consideration section eight, as amended, that it recommend
13 this section be adopted. All in favor of that motion, say Aye.

14 DELEGATES: Aye.

15 CHAIRMAN GRAYBILL: Opposed, No.

16 DELEGATES: No.

17 CHAIRMAN GRAYBILL: It's amended -- it's adopted as
18 amended. Section nine. Wait a minute. Is this nine, Mr. Cate?

19 DELEGATE CATE: (Inaudible. Microphone not turned on.)

20 CHAIRMAN GRAYBILL: O.K. Will the Clerk read section
21 nine?

22 CLERK SMITH: Section nine, Right to Know: No per-
23 son shall be deprived of the right to examine documents or to
24 observe the deliberations of all public bodies or agencies of
25 state government and its subdivisions, except in cases in which

1 in which the demand of individual privacy exceeds the merits of
2 public disclosure. Section nine --

3 CHAIRMAN GRAYBILL: Mr. Clerk, you're supposed to
4 read that individual privacy clearly exceeds the merits of
5 public disclosure. If you'll all look in your books on page
6 six and on line three thereof, between privacy and exceeds,
7 put in the word, clearly. The committee intends that word to
8 be in there initially. The Chair will allow that amendment to
9 the document: except in cases in which the demand of individ-
10 ual privacy clearly exceeds the merits of public disclosure.

11 Mrs. Eck.

12 DELEGATE ECK: I move that when this committee does
13 arise and report, after having had under consideration sec-
14 tion nine of proposal number eight, that it recommend that the
15 same be accepted.

16 Mr. Chairman.

17 CHAIRMAN GRAYBILL: Mrs. Eck.

18 DELEGATE ECK: The committee, with two dissenting
19 votes, and after considerable reflection, adopted this provis-
20 ion explicitly establishing a public right to know. In the
21 main, the provision is from Delegate Proposal Number Fifty-
22 Seven. It is a companion to the preceding right of partici-
23 pation. Both arise out of the increasing concern of citizens
24 and commentators alike that the government's sheer bigness
25 threatens the effective exercise of citizenship. The committee

1 notes this concern and believes that one step which can be tak-
2 en to change this situation is to constitutionally presume the
3 openness of government documents and operations. The provision
4 stipulates that persons have the rights to examine governmental
5 documents and the deliberations of all public bodies or agen-
6 cies except to the extent that the demands of individual pri-
7 vacy clearly outweigh the needs of the public right of dis-
8 closure. The provision applies to state government and its
9 subdivisions. The committee intends by this provision that
10 the deliberations and resolution of all public matters must be
11 subject to public scrutiny. It is urged that this is espec-
12 ially the case in a democratic society wherein the resolution
13 of increasingly complex questions leads to the establishment
14 of a complex and bureaucratic system of administrative agen-
15 cies. The test of a democratic society is to establish full
16 citizen access in the face of this challenge. The committee
17 approvingly cites section 82-3401 of the Revised Codes of
18 Montana, 1947, which provides: It is the intent of this act
19 --that's the open meeting act--that actions and deliberations
20 of all public agencies shall be conducted openly. The people
21 of the state do not wish to abdicate their sovereignty to the
22 agencies which serve them. We do commend this particular
23 bit of legislation but we think that probably it is not enough
24 and that this provision does go considerably farther and as
25 our government continues to grow, will provide a better basis

1 than one that is purely statutory. The committee, during its
2 deliberations on this provision, struck the word, public, from
3 the phrase, to examine public documents. This was done to
4 avoid tying the viability of this provision to the 1895 legis-
5 lative efforts to define public and private writings. Sections
6 two and three of Title 93, Chapter 1001 of the Revised Codes
7 of Montana, 1947, define these two classes of writings. Broad
8 categories of what constitute public writings are stipulated
9 in section two. Section three proclaims that all other writ-
10 ings are private. The committee admits that this list of
11 public writings is admirably broad; however, using this type
12 of statutory construction is dangerous when one is attempting
13 to establish a right to know. Judging from the example of
14 federal and state statutes on the matter, it is better to
15 stipulate the exclusions rather than the inclusions. To do
16 otherwise is to risk losing the right to examine a document
17 because it does not fit statutory categories as a public docu-
18 ment. The committee intends by this provision that the right
19 to know not be absolute. The right of individual privacy is
20 to be fully respected in any statutory embellishment of the
21 provision as well as in the court decisions that will interpret
22 it. To the extent that a violation of individual privacy out-
23 weighs the public right to know, the right to know does not
24 apply. To clearly establish this point, the committee stip-
25 ulated in the provision that the right to know is subject to

1 the demands of individual privacy. And, further to clarify
2 this point, we added the word, clearly, with the intention of
3 tipping the balance in the favor of the right to know. The
4 committee commends this provision to the Convention as a long
5 step forward in assuring the openness in government. By cre-
6 ating an atmosphere of openness in government, the committee
7 believes that confidence in government will increase and gov-
8 ernmental operations will be facilitated. Such a provision,
9 far from limiting the effectiveness of governmental operation,
10 establishes the prerequisite to the effective exercise of
11 citizenship in a democratic society. I think most of you are
12 aware of the fact that we have been getting quite a bit of
13 static on this and especially, in fact almost entirely regard-
14 ing the section which attempts to create the balance between
15 the right to know and privacy. We were aware of this really
16 from the beginning in our committee deliberations. The fact
17 that there is a right to privacy involved in the right to know.
18 I think it has come up time after time that we don't intend to
19 open up the state income tax records, that in this case for
20 the most part, the right of privacy exceeds the demands for
21 public disclosure. We do recognize, however, that there are
22 some cases where the right to know what is in a document that
23 might be classified may exceed the right to privacy. There
24 are times when the right to know what is going on in a delib-
25 eration regarding personnel, which ordinarily would be classi-

1 fied and would not be public. We considered it private. But
2 there are times when the public right to know clearly exceeds
3 the individual person's right to privacy in this case. You
4 might have an agency head, for instance, whose dismissal is
5 being considered. If there is -- if he is being dismissed for
6 cause, I would think that the public has a right to know that
7 reason for dismissal. There are times when this would apply to
8 local school boards associations, local government situations
9 and many others. Now, we have had a number of suggested re-
10 visions on this. The -- I can't think of his name -- from the
11 school of journalism, has suggested that we delete the entire
12 last provision listing the exceptions. His feeling is that the
13 court will provide the exceptions. We had assumed that the
14 court also would pretty well define the exceptions; in other
15 words, they would determine what the cases are in which the de-
16 mands of privacy exceed the demands for public disclosure, and
17 I think it was pretty well the agreement of our committee that
18 we would prefer this method of determination. However, I under-
19 stand that there are some in the body who would prefer leaving
20 it to the legislature and, you know, you could end by -- in the
21 exception phrase -- by saying something like, except in cases
22 in which the demands of privacy -- no, back further -- subject
23 to these exemptions as may be prescribed by law, or by the legis-
24 lature. To my mind, I don't know that I can weigh the advanta-
25 ges of having the legislature make this determination or the

1 court make it. I think our committee decided, and I'll go along
2 with them on it, that it would be better to leave it to the
3 courts to make this determination, but surely, if this body
4 decides that the legislature would be a safer or a more respon-
5 sive body to make the determination, I don't think our committee
6 would object greatly. For the present time, though, I would
7 like to present it to the committee as it is stated, with our
8 one amendment which inserts the word, clearly, as was read.
9 Thank you.

10 CHAIRMAN GRAYBILL: MR. Cate.

11 DELEGATE CATE: Mr. Chairman, members of the committee,
12 I think this provision is like the Biblical proverb--the Lord
13 giveth and the Lord taketh away. The first part of that para-
14 graph does give the citizen the right to know and the second
15 part of that paragraph denies the citizen the right to know.
16 I think that under the second part of that paragraph the fears
17 of the Montana Press Association and other individuals who have
18 written to us are well founded. Any governmental agency or
19 officer could refuse on the grounds that individual privacy ex-
20 ceeded the merits of public disclosure and in effect you would
21 not have a right to know. You might very well also jeopardize
22 the present statutes which we have in Montana dealing with the
23 right to know, and therefore I think it is prudent to add to
24 that provision a section which would permit the legislature to
25 set the situations in which individual privacy exceeds the mer-

1 its of public disclosure as they have under the present public
2 information act. So, I have a motion before this body which
3 I would ask the Clerk to read at this time, which I think will
4 take care of that situation, meet the objections of the Montana
5 Press Association as well. Thank you.

6 CHAIRMAN GRAYBILL: Will the Clerk please read Mr.
7 Cate's amendment?

8 CLERK SMITH: (Reading) Mr. Chairman, I move to amend
9 section nine of the Bill of Rights proposal on page twenty-one,
10 line nineteen, by inserting after the word, except, and before
11 the word, in, the words, as may be provided by law. Signed,
12 Cate. (End reading)

13 CHAIRMAN GRAYBILL: Members of the body, that is on
14 --if you're on page six, that's on line two--after the word,
15 except, Mr. Cate would add as provided by law in cases in which
16 the demands of individual privacy clearly exceeds the merits
17 of public disclosure, so Mr. Cate adds the except -- adds after
18 the word, except, as may be provided by law -- the phrase, as
19 may be provided by law, so that the last phrase reads: except
20 as provided by law in cases in which the demands of individual
21 privacy clearly exceeds the merits of public disclosure. It
22 has the effect of putting the legislature in as the arbiter of
23 the cases excepted. Mr. Cate, do you have anything further?

24 DELEGATE CATE: (No audible response.)

25 CHAIRMAN GRAYBILL: Mr. Foster.

1 DELEGATE FOSTER: Mr. Chairman and fellow Delegates,
2 the committee worked long and hard on this particular section
3 and we invited testimony from members of the news media and we
4 worked with their assistant. It was only after we completed
5 our section that they suddenly, somewhere, from some place de-
6 cided that our section was too weak and I'd like to quote from
7 the testimony of Mr. Dan Foley in regarding this particular
8 subject. He says: I understand that this committee is very
9 concerned about the right of privacy, and well that you should
10 be in the era of credit checks and computer banks, wiretaps and
11 bugging devices, and military spying on those exercising their
12 rights of free speech and assembly. Governments, even state
13 governments, collect information on all of us, some of which
14 should not be in the public domain. I would never suggest, for
15 example, that the people's right to know extends to inspection
16 of individual income tax returns. He continues--but I think
17 the people's right to know about their government and an indi-
18 vidual's right to privacy can be balanced in the Constitution.
19 I understand that you are considering a proposal which guaran-
20 tees public access except in cases in which the demands for in-
21 dividual privacy exceed the merits of the public disclosure.
22 I would endorse such a proposal. I much prefer it to any pro-
23 vision guaranteeing access, quote, except as otherwise provided
24 by law. I don't think the latter provision would give the pub-
25 lic or the press any access they don't already have under the

1 state law and it might be an open invitation to legislation set-
2 ting forth exceptions to the access rule. Now, it was the
3 thinking of the committee that in fact the courts would have to
4 strike the balance between the merits of public disclosure and
5 the merits of privacy, and our committee had faith in our courts
6 to strike this balance and we did not feel that this particular
7 provision should be left to the legislature to interpret, and
8 I would oppose the amendment of Delegate Cate. Thank you, Mr.
9 Chairman.

10 CHAIRMAN GRAYBILL: Mr. Martin.

11 DELEGATE MARTIN: Mr. Chairman, as a substitute mo-
12 tion I would like to make a motion to delete the section. I
13 do this with tongue in cheek because for fifty years I have been
14 trying to accomplish and secure the right to know but there
15 have been some developments which came up since Dan Foley test-
16 ified before the Bill of Rights Committee and on the basis of
17 that and the studies that were made by the Montana State Press
18 Association, I take this position --

19 CHAIRMAN GRAYBILL: Mr. Martin, the Chair will allow
20 your substitute motion to delete section nine in its entirety.
21 Is that your point?

22 DELEGATE MARTIN: Yes.

23 CHAIRMAN GRAYBILL: Very well, you may discuss it.

24 DELEGATE MARTIN: In this morning's Missoulian there
25 is an editorial and I'll just quote a little bit. The title

1 to that is, Right to Conceal Must be Killed. The right to know
2 section proposed by the Constitutional Convention Bill of Rights
3 Committee should better be called the right to conceal. Earlier
4 in section eight we talked about the word, expect. The one word
5 in this case is except. The provision says, no person shall be
6 deprived of the right to examine documents or to observe the
7 deliberations of all public bodies or agencies of state govern-
8 ment and its subdivisions, except in cases in which the demands
9 of individual privacy exceeds the merits of public disclosure.
10 The words, except in cases in which the demands of individual
11 privacy exceeds the merits of public disclosure, are causing
12 widespread alarm among Montana newspapermen. They believe the
13 words are so vague they could be interpreted to allow almost
14 any public board, agency or administrator to cover up vital
15 public matters. The Montana Press Association has notified all
16 Delegates of its fear that the right to know section could be-
17 come a vehicle for concealment. There is more of this than the
18 concern being expressed by the press. This article could close
19 much of government to all citizens, frustrating their ability
20 to participate in the decision making process and giving each
21 even more power to those who like to exercise power behind the
22 scenes. The proposed section either should be amended so the
23 dangerous wording is removed or, better yet, simply deleted
24 entirely. An editor of the other sex, Donna Brown of the Gal-
25 latin County Tribune, said this last week: I am positive that

1 the Constitutional Convention delegates would never knowingly
2 pass a section of the proposed Constitution if they thought it
3 was unjust, unworkable and would contravene one of the freedoms
4 guaranteed this nation by the founding fathers, freedom of the
5 press, but this is what could happen if the committee of the
6 whole does not change a section of the proposed bill of rights
7 that will be debated in the near future. Mrs. Brown says, I
8 take strong exception to the wording, except in cases in which
9 the demands of individual privacy exceeds the merits of public
10 disclosure. As it is written, the passage makes this section
11 of the bill of rights very subjective, subject to the desire or
12 whim of the agencies concerned, or possibly the legislature.
13 In the end, only the courts could settle the matter. This is
14 what can happen when you let the bill of rights become a docu-
15 ment for government manipulation and distributes a right un-
16 equally to the people. Our country is based upon absolute
17 equal individual rights. Let's not, as Senator Irvin says,
18 limit the right of the public to be informed with a faulty sec-
19 tion in the bill of rights. It would be better to eliminate
20 the right to know provision altogether than to undermine our
21 present freedom, however much they may need strengthening.
22 After recess this afternoon, I talked at some length with Fran-
23 cis Mitchell of Common Cause. I think that we have a mutual
24 agreement of the absolute need for strengthening the right of
25 the public to know, and I also talked with Mrs. Eck as well as

1 with Mr. Dahood, but we came -- I came to the conclusion that
2 you should give some consideration to the letters that came from
3 the attorney for the Montana Press Association in Billings, as
4 well as for the member of the faculty of the dean of the school
5 of journalism and in their suggestions. I do hope that we can
6 continue the spirit of openness which has marked this Convention
7 and I think we have made some great strides in regard to this
8 openness of meetings, but let's not get it so tangled up that
9 we have words like except. Let's either be positive or not have
10 anything at all. I hope that the motion to delete prevails.

11 CHAIRMAN GRAYBILL: Mr. Dahood!

12 DELEGATE DAHOOD: :Mr. Chairman, I oppose the motion
13 to delete and I think we ought to place proper focus on the
14 position that is taken by the press. The gentlemen of the
15 fourth estate seem to think they have no responsibility in a
16 free society. They have a responsibility, and this particular
17 section was not enacted for their benefit. It was enacted for
18 the benefit of the citizen of the state of Montana. This par-
19 ticular section was in the rough draft that was circulated sev-
20 eral weeks back. This particular section was framed after the
21 gentlemen of the press themselves appeared before the committee
22 and said this particular language was acceptable. Recently,
23 someone in an ivory tower in an eastern state, apparently that
24 represents some national press association, has read this par-
25 ticular section and with his sophisticated training far beyond

1 my own or that of any member of the committee, has decided that
2 the wording in this particular section impairs the right of free-
3 dom in a free society. And in the state of Montana, apparently,
4 those who represent the press have paid some heed to that clarion
5 call and they make the same indictment. We're reasonable people.
6 Let's read the section. The first sentence reads: No person
7 shall be deprived of the right to examine documents or to ob-
8 serve the deliberations of all public bodies or agencies of
9 state government and its subdivisions. Language, of course,
10 serves the purpose of communication. How much clearer can this
11 communication be with respect to what is intended by the Bill
12 of Rights Committee? What is there in that particular sentence
13 that does not serve the public interest? What is there in that
14 particular sentence that in any way injures or impairs the
15 right of the press to ferret out the news and report to the
16 public? What is there in that particular sentence that shackles
17 the press from acting as a watchguard upon the activities of
18 government for our benefit? Not for their benefit to sell news-
19 papers, but for our benefit. And the two purposes behind this
20 section, as are the basic purposes behind the federal amendment
21 contained within the Bill of Rights that provides freedom of the
22 press, are twofold; one--to allow the press to be a watchguard
23 on the activity of government and, second, to make sure that
24 the rights of the individual citizen of a free democracy are
25 protected, and that is the only justification for a free press

1 in a democratic society. Now, let's go on to the second part
2 of it -- except in cases in which the demands of individual
3 privacy clearly exceeds the merits of public disclosure. Now,
4 what's our concern? Our concern is to make sure that this so-
5 called right to access with respect to government documents,
6 this right of access that we call freedom of the press, is being
7 used to foster individual right and citizenship in this partic-
8 ular society of Montana. There's got to be a limit to it. The
9 reason we organize in a free society is to make sure we have
10 dignity, that we have privacy, that our private affairs are not
11 open to public scrutiny. Now, if I go into a welfare department
12 and I'm a poor citizen and I have to disclose my circumstances,
13 circumstances I'm not proud of, perhaps circumstances that may
14 reflect upon the children of tender years that I have to feed
15 and clothe, whose parentage perhaps must be reflected in shadows
16 that I don't want publicly disclosed but I have to disclose those
17 facts to gain assistance from the beneficent state of Montana.
18 Should that be open to scrutiny? I'm injured. My medical his-
19 tory is important. Perhaps I've had diseases I don't care to
20 have disclosed publicly but that medical history requires that
21 these particular facts be placed within that particular govern-
22 mental file so that there's sufficient basis for the claim that
23 I make as provided by law. Should the press have access to
24 that? And on and on. How about the confidential relationships
25 that are set by statute that are zealously guarded? Should they

1 not be protected? Should not communication with respect to a
2 private matter that deals with some governmental concern between
3 attorney and client not be protected? Perhaps there's some dis-
4 closure between priest and penitent, doctor and patient, the
5 sacred relationships that are so important in a free society,
6 should they not be paramount? Should they not be supreme? We
7 are all trained to read our own language. Read this. Where
8 within this language do you see anything that restricts the
9 right of the press to know and to investigate and to examine
10 that is not within the limits of fairness to all of us. They
11 are here to serve us and to protect our rights and we want our
12 rights protected first and foremost and always. And I submit
13 to you that as chairman of the Bill of Rights Committee, I
14 thought at times that the journalistic proboscis of the fourth
15 estate was much too long on many occasions and was delving
16 into concerns that were beyond fair press and fair report, but
17 the members of my committee convinced me that the press wanted
18 this particular declaration and it should be within the Bill of
19 Rights and we would be forward, among all the states, in enact-
20 ing this particular provision, and so I accepted their reason-
21 ing and I accepted their concern and I accepted their motiva-
22 tion. Most laudable, indeed, to balance the need to know with
23 the need to have the press act as a watchguard upon government.
24 Balance that with the basic right of individual dignity and
25 privacy in the type of governmental structure which we have and

1 which we enjoy. And I say to you here and now, section nine
2 will serve that purpose and this campaign that has been levied
3 against it is not a just campaign and fails to strike the mark
4 because the mark that we strike is for the people of the state
5 of Montana. Mr. Chairman, I oppose the amendment.

6 CHAIRMAN GRAYBILL: Mr. Harper.

7 DELEGATE HARPER: Mr. Chairman, I'm concerned about
8 Mr. Martin's proposal to strike this section. I've been trying
9 to read along a little bit ahead and to find out just where
10 else this same right is guaranteed, and I wonder what the ans-
11 wer to this question would be -- if we strike out section nine,
12 the right to know, then where in our Constitution do we guar-
13 antee this same thing? And if it is not guaranteed just this
14 way, then if it is left as a matter of law to government agen-
15 cies to make this decision for themselves, then where do peo-
16 ple have this guarantee? So, I am going to work and vote to
17 keep this section in because I think it's necessary. Then, a
18 second thought occurs to me. If we do write it in as Mr. Da-
19 hood has suggested, should it be absolute? Or should there be
20 any exceptions? And the third thought occurred to me. If
21 there should be any exceptions, then how do you write it in?
22 If you don't write it in this way, then I'd like to hear -- and
23 I'm serious, now -- this is dialogue on the subject -- if there
24 should be any exceptions and particularly in view of the next
25 section that we're going to present, the right to privacy, then

1 how would you make a statement of the fact that there should be
2 exceptions in a manner that would be superior to this?

3 CHAIRMAN GRAYBILL: Mr. Loendorf.

4 DELEGATE LOENDORF: Mr. Chairman, I'd like to direct
5 my remarks chiefly to Mr. Dahood, if he'd remain --

6 (Laughter)

7 DELEGATE LOENDORF: No question. I'm serious, though,
8 here, Wade. Mr. Cate made an amendment which I think at this
9 stage I will support and I didn't think you were opposing it
10 until the remark you made just before you sat down, and apparent-
11 ly you may be. What concerns me here, though, is how this right
12 is to be enforced. If we leave it to the courts, as Mrs. Eck
13 suggested, the agency really makes the first determination.
14 For example, suppose I wish to attend a public meeting. I go
15 and the agency advises me that a man's individual privacy pre-
16 cludes me from attending. I, then, have to go to court and
17 attempt to get an order allowing me to attend. The court may
18 -- by the time I can do that the court might tell me, O.K., the
19 question is moot; the meeting is over. Or, for example, the
20 welfare recipient. He goes and makes certain disclosures in
21 order to get the benefit of welfare. Then the agency discloses
22 this to the press. Well then, again, it's too late for him to
23 come in and get an order, really, to protect himself and I won-
24 der if Mr. Cate's amendment allowing the legislature to make
25 some general laws in this area right in the exceptions might not

1 be good. I'm not sure and I'd appreciate your comments.

2 CHAIRMAN GRAYBILL: Mr. Dahood.

3 DELEGATE DAHOOD: Mr. Chairman, the legislature, of
4 course, would still have the right to make any regulation that
5 it deems necessary in conformity with section nine. With re-
6 spect to the fears and apprehensions which you have recited, I
7 would much rather have that error made in favor of individual
8 right than in favor of disclosure that might cause some partic-
9 ular problem or error or disgrace or indignity that would be
10 beyond any type of remedy whatsoever. I think that we can take
11 any of these particular rights and we can carry our analogy
12 out to the extreme and show where we can have problems, but
13 we've got to have faith in the people that are representing us
14 in governmental capacity. We've got to have faith in the peo-
15 ple that are going to know about this particular section and
16 know that they have a certain obligation and a certain respon-
17 sibility to disclose these things. We've got to have faith
18 in these people in cases where there is, without any doubt, the
19 right of privacy to restrain that particular disclosure. I
20 think that when we make the comment that has been made and the
21 critique, I think we are assuming that these people are not
22 going to act responsibly. Nobody is going to act perfectly.
23 Nobody is so completely perfect that they are going to act in
24 a manner where they're not going to make any mistakes, but we're
25 going to reduce the chance for error in this connection. There

1 may be a requirement for a court case or two or three to set
2 a proper guideline, but isn't that the history of freedom?
3 Isn't that why we have a judiciary that is so supreme and that's
4 so final because there comes a time with all of our rights where
5 a court test is required so that that particular right can be
6 outlined and deliniated with respect to the time within which
7 that particular question has been raised. I submit to you that
8 there is no way to draft a perfect constitutional provision but
9 this provision does provide the practical guideline and the
10 practical right and the practical obligation that we want here
11 to accomplish the purpose that is intended. I submit to you
12 that the motions to delete and the motions to amend should be
13 rejected.

14 CHAIRMAN GRAYBILL: Mr. Brown.

15 DELEGATE BROWN: Mr. President, I'm going to, if we
16 ever get to it, talk in favor of Mr. Cate's amendment but we
17 are starting to discuss the philosophy of those -- whether it
18 should be by court or legislature and I hope we can vote on
19 the deletion now and if that wins, that's the end of it, but
20 if it doesn't, then I think we can go on to the other discus-
21 sion.

22 CHAIRMAN GRAYBILL: Mr. Martin, do you want to close?

23 DELEGATE MARTIN: Mr. Chairman, we have on the stat-
24 ute books today section 82-3401 of the 1947 codes, legislative
25 intent, liberal construction. It is the intent of this act

1 that actions and deliberations of all public agencies shall be
2 conducted openly. Section 82-3402 provides meetings of public
3 agencies to be open to public, and it has some exceptions--
4 national or state security, the disciplining of any public of-
5 ficers, the employment or appointment or something, the purchas-
6 ing of public property, the revocation of a license and law en-
7 forcement and so forth. And then minutes of meetings on sec-
8 tion 82-3403--minutes of meetings, public inspection, open to
9 the public. Now, the exception that we take with regard to
10 this is not in the positive statements of -- that is, no person
11 shall be deprived of the right to examine documents or to ob-
12 serve the deliberations of all public bodies or agencies of
13 state government and its subdivisions. There is nothing wrong
14 with that, but when we get to the except, it then gives and
15 provides some opportunities where some bureaucrat, some agency,
16 some government official can shut up a classified file and make
17 some decisions. That's the point. If it were just to end with
18 subdivisions and prior -- just prior to the exception, there
19 would be no question and I think that in view of the statutes
20 that are there, a provision that would provide except as pro-
21 vided by law. Now, Mr. Cate in his amendment, as I understand
22 it, was going to continue, in cases in which the demands of
23 privacy exceed the merits of public disclosure. This was the
24 basis on which our motion to delete was made, and as much as
25 we would like to see it decided, I think that we want you to

1 know, not that we're trying to tell how people should do and how
2 people should act -- in the section on freedom of the press there
3 are some provisions there that those of us who don't do the right
4 thing are subject to libel and slander actions and some of us
5 have been burned pretty badly by that. I hope the -- my motion
6 prevails.

7 CHAIRMAN GRAYBILL: Very well, the issue is on Mr.
8 Martin's motion, substitute motion, to delete section nine in
9 its entirety. Do you want a roll call vote?

10 DELEGATES: (Indicating affirmative)

11 CHAIRMAN GRAYBILL: Very well, we'll have a roll call
12 vote. All those in favor of deleting section nine in its en-
13 tirety say -- vote Aye, and all those opposed, vote No. Have
14 all the Delegates voted?

15 (No response)

16 CHAIRMAN GRAYBILL: Does any Delegate wish to change
17 his vote?

18 (No response)

19 CHAIRMAN GRAYBILL: Please take the vote.

20 Aasheim	-	Nay	Artz	-	Nay
21 Anderson, J.	-	Nay	Ask	-	Nay
22 Anderson, O.	-	Nay	Babcock	-	Nay
23 Arbanas	-	Nay	Barnard	-	Nay
24 Arness	-	Absent	Bates	-	Absent
25 Aronow	-	Nay	Belcher	-	Excused

1	Berg	-	Nay	Felt	-	Absent
2	Berthelson	-	Nay	Foster	-	Nay
3	Blaylock	-	Nay	Furlong	-	Nay
4	Blend	-	Nay	Garlington	-	Aye
5	Bowman	-	Nay	Gysler	-	Aye
6	Brazier	-	Nay	Habedank	-	Aye
7	Brown	-	Nay	Hanson, R. S.	-	Nay
8	Bugbee	-	Absent	Hanson, R.	-	Nay
9	Burkhardt	-	Nay	Harbaugh	-	Nay
10	Cain	-	Nay	Harlow	-	Nay
11	Campbell	-	Nay	Harper	-	Nay
12	Cate	-	Nay	Harrington	-	Nay
13	Champoux	-	Nay	Heliker	-	Nay
14	Choate	-	Nay	Holland	-	Aye
15	Conover	-	Nay	Jacobsen	-	Nay
16	Cross	-	Nay	James	-	Nay
17	Dahood	-	Nay	Johnson	-	Nay
18	Davis	-	Nay	Joyce	-	Aye
19	Delaney	-	Nay	Kamhoot	-	Absent
20	Driscoll	-	Aye	Kelleher	-	Nay
21	Drum	-	Absent	Leuthold	-	Nay
22	Eck	-	Nay	Loendorf	-	Nay
23	Erdmann	-	Nay	Lorello	-	Nay
24	Eskildsen	-	Excused	Mahoney	-	Absent
25	Etchart	-	Aye	Mansfield	-	Nay

1	Martin	-	Aye	Scanlin	-	Nay
2	McCarvel	-	Nay	Schiltz	-	Nay
3	McDonough	-	Nay	Siderius	-	Nay
4	McKeon	-	Nay	Simon	-	Aye
5	McNeil	-	Nay	Skari	-	Nay
6	Melvin	-	Nay	Sparks	-	Nay
7	Monroe	-	Nay	Speer	-	Nay
8	Murray	-	Nay	Studer	-	Nay
9	Noble	-	Nay	Sullivan	-	Nay
10	Nutting	-	Excused	Swanberg	-	Nay
11	Payne	-	Nay	Toole	-	Nay
12	Pemberton	-	Aye	Van Buskirk	-	Nay
13	Rebal	-	Nay	Vermillion	-	Nay
14	Reichert	-	Nay	Wagner	-	Aye
15	Robinson	-	Nay	Ward	-	Aye
16	Roeder	-	Aye	Warden	-	Nay
17	Rollins	-	Nay	Wilson	-	Nay
18	Romney	-	Nay	Woodmansey	-	Nay
19	Rygg	-	Aye	Mr. Chairman	-	Nay

20 CLERK SMITH: Mr. Chairman, fourteen Delegates voting
21 Aye, seventy-six voting No.

22 CHAIRMAN GRAYBILL: The committee will be in order.
23 Seventy-six people having voted No and fourteen having voted
24 Aye, the motion to delete fails. We are now debating Mr. Cate's
25 amendment.

1 Mr. Brown.

2 DELEGATE BROWN: Mr. Chairman, I rise to support the
3 amendment of Mr. Cate. I think that Mr. Dahood and Mr. Cate
4 and I are trying to get to the same thing. I agree with Wade
5 that we should protect welfare records, medical records, and
6 certain other things like adoptions that certainly should not
7 be made accessible to newspapermen. However, I can see where
8 this would be abused by a county commissioner, a governor,
9 other state officials, using this exception in our present Con-
10 stitution to deny access to public documents. As a result you
11 would have to go to court and end up ultimately with the supreme
12 court, which would take years in many cases. We would be liti-
13 gating hundreds of cases by public officials denying access.
14 However, if you go along with Mr. Cate's amendment, when they
15 see an abuse of this by public officials then they can immed-
16 iately amend the laws to provide for open access. So, I go
17 along with Mr. Cate. Don't let the courts tie this all up, but
18 let the legislature have flexibility provided by law -- they've
19 got a clear mandate under this article. Then we can have leg-
20 islative support for it and if the courts start to abuse the
21 matter, then the legislature can correct it. But, if you get
22 a narrow-minded court in future years and they narrowly con-
23 strue this article, then Mr. Dahood's rights are out the win-
24 dow, so I hope that the Convention will support Mr. Cate's
25 amendment. Thank you, Mr. President.

1 CHAIRMAN GRAYBILL: Mr. Cate's amendment has the ef-
2 fect of adding on line two on page six this phrase: except as
3 may be provided by law in cases in which the demands of indi-
4 vidual privacy clearly exceeds the merits of public disclosure.

5 Mr. Schiltz.

6 DELEGATE SCHILTZ: Mr. Chairman, I don't think this
7 kind of language belongs in the bill of rights anywhere. I
8 think we are announcing principles here and we shouldn't be
9 referring things to the legislature from the bill of rights.
10 I can't see that this adds a thing to the bill of rights and
11 in answer to Mr. Brown's argument, he's throwing up a smoke
12 screen about the supreme court and hundreds of cases. The
13 supreme court will decide the issues involved here in one or
14 two cases and it's purely a smoke screen and should be disre-
15 garded. I don't approve of the amendment.

16 CHAIRMAN GRAYBILL: Mr. Davis.

17 DELEGATE DAVIS: Mr. President, I would support this
18 amendment, too. It seems to me, from the discussion of the
19 members of the majority of this committee, they indicate that
20 this is in there by reference anyway, but we already have stat-
21 utory law that I don't think they intend to repeal by this con-
22 stitutional provision. It could be inferred they intend to re-
23 peal the open meeting part of the statutory law. It's import-
24 ant, as twenty years as county attorney there have been many,
25 many things that you cannot make public disclosure on, partic-

1 ularly sex crimes and juvenile matters and that sort of thing,
2 and it's really been no problem--I know in my area, anyway. I
3 think if you make it as provided by law it is in keeping with
4 the intent of the majority. They indicate that it's inferred
5 that this will be done and I'm sure they have no intention to
6 repeal the present statutes on this subject but, rather, let
7 them expand them and implement them as time goes by. So I
8 would support Mr. Cate's amendment.

9 CHAIRMAN GRAYBILL: Mr. Foster.

10 DELEGATE FOSTER: Mr. Chairman, fellow Delegates, I
11 resist the motion of Mr. Cate very strongly and take exception
12 to Mr. -- Delegate Davis' inference that the majority of the
13 committee would, in fact, support this amendment. We discussed
14 this question of except in cases as provided by law in our com-
15 mittee and rejected it and clearly felt that it did not belong
16 in there, and we felt that the proposal of the committee was
17 what, in fact, we wanted and we felt confident that the courts
18 would determine this in their wisdom and we also felt that the
19 legislature could provide provisions within the determinations
20 of the court to embellish it without specifically stating it,
21 and I support the position of Delegate Schiltz, particularly in
22 this regard, and also the position of the majority of the com-
23 mittee. Thank you, Mr. Chairman.

24 CHAIRMAN GRAYBILL: Mr. Skari.

25 DELEGATE SKARI: Mr. Chairman, would Mr. Dahood yield,

1 please?

2 CHAIRMAN GRAYBILL: Mr. Dahood?

3 DELEGATE DAHOOD: I yield, Mr. Chairman.

4 DELEGATE SKARI: Mr. Dahood, in section 82-3402, Re-
5 vised Codes of Montana, in section four, they say that one of
6 the exceptions is the purchasing of public property, the invest-
7 ing of public funds, or other matters involving competition or
8 bargaining which, if made public, may adversely affect the pub-
9 lic security or financial interest of the state or any politi-
10 cal subdivision or agency of the state. Does your bill of
11 rights section nine cover that sort of thing? In other words,
12 can the state's interest be protected here?

13 DELEGATE DAHOOD: Yes, I think the state's interest
14 is protected in those instances where there is a need for that
15 protection. Where you've got a bidding situation, of course
16 that matter must be kept confidential until the bidding is
17 over.

18 DELEGATE SKARI: Mr. President, would Mr. Dahood
19 yield again?

20 CHAIRMAN GRAYBILL: Mr. Dahood?

21 DELEGATE DAHOOD: I yield, Mr. President, Mr. Chairman.

22 DELEGATE SKARI: Well, as I read it, section nine
23 states except in the case where the demand of individual pri-
24 vacy exceeds the merits of public disclosure. I have a little
25 trouble with that.

1 DELEGATE DAHOOD: Well, Mr. Skari -- Delegate Skari,
2 what we are talking about here, of course, is protecting basi-
3 cally the right of the individual with respect to those matters
4 that may affect him. I think what you are talking about is the
5 statute which has to do with certain functions of government in
6 securing property for the operation of government to serve the
7 citizen, and I must confess I have not had the occasion to re-
8 view that statute recently, but I think as you read it, that
9 indicated there must be some confidentiality up to a particular
10 point. Is that not true?

11 DELEGATE SKARI: Yes.

12 DELEGATE DAHOOD: And I think that's necessary for
13 the integrity of government within that particular area. I do
14 not think that anyone would expect to have information before
15 a particular point of decision is reached in that situation
16 because the reason for it, of course, is to secure property for
17 the government at the best obtainable price.

18 DELEGATE SKARI: Thank you, Mr. Dahood.

19 CHAIRMAN GRAYBILL: Very well, the issue arises on
20 Mr. Cate's amendment to add the words, as may be provided by
21 law, after the word, except, so that the last clause reads:
22 except as may be provided by law in cases in which the demand
23 of individual privacy clearly exceeds the merits of public dis-
24 closure. Do you want a roll call vote?

25 DELEGATES: (Indicating affirmatively)

1 CHAIRMAN GRAYBILL: Very well, a roll call vote has
2 been called for. All in favor of Mr. Cate's amendment, vote
3 Aye on the voting machines. All opposed, vote No. Has every
4 Delegate voted?

5 (No response)

6 CHAIRMAN GRAYBILL: Does any Delegate wish to change
7 his vote?

8 (No response)

9 CHAIRMAN GRAYBILL: Will the Clerk take the ballot?

10	Aasheim	-	Nay	Bowman	-	Nay
11	Anderson, J.	-	Aye	Brazier	-	Aye
12	Anderson, O.	-	Aye	Brown	-	Aye
13	Arbanas	-	Aye	Bugbee	-	Absent
14	Arness	-	Absent	Burkhardt	-	Nay
15	Aronow	-	Nay	Cain	-	Nay
16	Artz	-	Nay	Campbell	-	Nay
17	Ask	-	Aye	Cate	-	Aye
18	Babcock	-	Nay	Champoux	-	Nay
19	Barnard	-	Nay	Choate	-	Aye
20	Bates	-	Absent	Conover	-	Nay
21	Belcher	-	Excused	Cross	-	Nay
22	Berg	-	Aye	Dahood	-	Nay
23	Berthelson	-	Nay	Davis	-	Aye
24	Blaylock	-	Nay	Delaney	-	Absent
25	Blend	-	Aye	Driscoll	-	Aye

1	Drum	-	Absent	Leuthold	-	Nay
2	Eck	-	Nay	Loendorf	-	Aye
3	Erdmann	-	Nay	Lorello	-	Nay
4	Eskildsen	-	Excused	Mahoney	-	Absent
5	Etchart	-	Aye	Mansfield	-	Nay
6	Felt	-	Absent	Martin	-	Aye
7	Foster	-	Nay	McCarvel	-	Absent
8	Furlong	-	Nay	McDonough	-	Aye
9	Garlington	-	Aye	McKeon	-	Nay
10	Gysler	-	Nay	McNeil	-	Aye
11	Habedank	-	Aye	Melvin	-	Aye
12	Hanson, R. S.	-	Nay	Monroe	-	Nay
13	Hanson, R.	-	Aye	Murray	-	Aye
14	Harbaugh	-	Nay	Noble	-	Nay
15	Harlow	-	Nay	Nutting	-	Excused
16	Harper	-	Nay	Payne	-	Nay
17	Harrington	-	Nay	Pemberton	-	Nay
18	Heliker	-	Nay	Rebal	-	Aye
19	Holland	-	Nay	Reichert	-	Nay
20	Jacobsen	-	Nay	Robinson	-	Nay
21	James	⊖	Nay	Roeder	-	Nay
22	Johnson	-	Nay	Rollins	-	Aye
23	Joyce	-	Absent	Romney	-	Nay
24	Kamhoot	-	Absent	Rygg	-	Aye
25	Kelleher	-	Nay	Scanlin	-	Nay

1	Schiltz	-	Nay	Toole	-	Nay
2	Siderius	-	Nay	Van Buskirk	-	Absent
3	Simon	-	Nay	Vermillion	-	Nay
4	Skari	-	Aye	Wagner	-	Aye
5	Sparks	-	Nay	Ward	-	Aye
6	Speer	-	Nay	Warden	-	Aye
7	Studer	-	Nay	Wilson	-	Nay
8	Sullivan	-	Nay	Woodmansey	-	Nay
9	Swanberg	-	Aye	Mr. Chairman	-	Nay

10 CLERK SMITH: Mr. Chairman, thirty voting Aye, fifty-
11 six voting No.

12 CHAIRMAN GRAYBILL: Fifty-six having voted No and
13 thirty having voted Aye, Mr. Cate's amendment fails. We are
14 back on section nine as submitted by the majority report here
15 of the -- by the Bill of Rights Committee report. Is there
16 further discussion of section nine?

17 Mr. McDonough.

18 DELEGATE McDONOUGH: Mr. President, I now have to ask
19 Mr. Dahood a question. Would he yield, please?

20 CHAIRMAN GRAYBILL: Mr. Dahood, would you yield?

21 DELEGATE DAHOOD: I yield, Mr. Chairman.

22 DELEGATE McDONOUGH: Mr. Dahood, would this section
23 now -- nine, as it is now standing with the defeat of that
24 amendment, would that allow a defendant in a criminal case more
25 leeway and more power than he has now to examine the records of

1 the county attorney's office relative to the case he's being
2 tried for?

3 DELEGATE DAHOOD: No, I think not, Delegate McDonough,
4 for this reason. I think all rights have to be balanced against
5 a police power. I think the supreme court of the United States
6 has announced that doctrine time and time and time again. We
7 have a criminal code in the state of Montana that provides the
8 discovery that you are talking about and I think that would be
9 balanced as against that particular section. I do not think
10 that that would have any effect whatsoever upon a criminal sit-
11 uation.

12 DELEGATE McDONOUGH: Thank you.

13 CHAIRMAN GRAYBILL: Mr. Davis.

14 DELEGATE DAVIS: Mr. President, would Mr. Dahood
15 yield to a question?

16 CHAIRMAN GRAYBILL: Mr. Dahood?

17 DELEGATE DAHOOD: I yield, Mr. Chairman.

18 DELEGATE DAVIS: Mr. Dahood, for the benefit of the
19 journal and the record here, is it your intention of this to
20 repeal the existing statutes on open hearings or do you feel
21 they would still remain in full force and effect?

22 DELEGATE DAHOOD: I feel they would still remain in
23 full force and effect, Delegate Davis.

24 DELEGATE DAVIS: Thank you, Delegate --

25 (Laughter)

1 CHAIRMAN GRAYBILL: Is there other discussion?

2 (No response)

3 CHAIRMAN GRAYBILL: Very well, members of the commit-
4 tee, you have before you for your consideration, upon the recom-
5 mendation of Mrs. Eck, that when this committee does arise and
6 report, after having had under consideration section nine of
7 the Bill of Rights article, that it recommend the same be adopt-
8 ed. Mr. Heliker, for what purpose do you arise?

9 DELEGATE HELIKER: I would like to ask Mr. Dahood a
10 question.

11 CHAIRMAN GRAYBILL: O.K. Mr. Dahood.

12 DELEGATE DAHOOD: I yield, Mr. Chairman.

13 DELEGATE HELIKER: Mr. Dahood, being an ignorant non-
14 lawyer, what is an individual?

15 DELEGATE DAHOOD: What is an individual?

16 DELEGATE HELIKER: Is it by any chance also a corp-
17 oration.

18 DELEGATE DAHOOD: A person can, Dr. Heliker, as you
19 well know, be defined to include a corporation under the law.

20 DELEGATE HELIKER: I know a person can, but can an
21 individual?

22 DELEGATE DAHOOD: An individual in my judgment would
23 not be a corporation, no.

24 DELEGATE HELIKER: Thank you.

25 CHAIRMAN GRAYBILL: Well, the Chair doubts that it

1 needs to restate that lingo. All those in favor of this motion
2 say Aye.

3 DELEGATES: Aye.

4 CHAIRMAN GRAYBILL: Opposed, No.

5 DELEGATES: No.

6 CHAIRMAN GRAYBILL: So ordered. Section nine is
7 adopted. Will the Clerk please read section ten?

8 CLERK SMITH: (Reading) Section ten, Right of Pri-
9 vacy: The right of privacy is essential to the well-being of
10 a free society and shall not be infringed without the showing
11 of a compelling state interest. (End reading) Section ten,
12 Mr. Chairman.

13 CHAIRMAN GRAYBILL: Mr. Campbell.

14 DELEGATE CAMPBELL: Mr. Chairman, I move that when
15 this committee does arise and report, after having had under
16 consideration section ten of proposal number eight, it recom-
17 mend that the same be adopted.

18 CHAIRMAN GRAYBILL: Mr. Campbell.

19 DELEGATE CAMPBELL: Mr. Chairman, fellow Delegates,
20 the right of privacy is a right that is not expressly stated
21 in either the United States or the Montana Constitutions. It
22 is our feeling on the Bill of Rights Committee that the times
23 have changed sufficiently that this important right should now
24 be recognized. If I may, Mr. Chairman, I would like to add an
25 amendment which the committee has made and I would like it

1 voted on before I continue. This would be to add to section
2 ten the right of individual privacy.

3 CHAIRMAN GRAYBILL: Is that on line five of page six?

4 DELEGATE CAMPBELL: Yes, Mr. Chairman, and the com-
5 mittee has unanimously approved of this amendment and would re-
6 quest a vote on it if necessary.

7 CHAIRMAN GRAYBILL: So many as shall be in favor of
8 adding the word, individual, so that it reads: the right of
9 individual privacy, as the committee wishes to have this matter
10 considered, please say Aye.

11 DELEGATES: Aye.

12 CHAIRMAN GRAYBILL: Opposed?

13 DELEGATES: (No audible response)

14 CHAIRMAN GRAYBILL: So ordered.

15 DELEGATE CAMPBELL: This would exclude any question
16 about a government or a corporation. In our early history, of
17 course, there was no need to expressly state that an individual
18 should have a right of privacy. Certainly, back in 1776, 1789,
19 when they developed our bill of rights, the search and seizure
20 provisions were enough, when a man's home was his castle and
21 the state could not intrude upon this home without the procur-
22 ing of a search warrant with probable cause being stated before
23 a magistrate and a search warrant being issued. No other pro-
24 tection was necessary and this certainly was the greatest amount
25 of protection that any free society had given its individuals.

1 In that type of a society, of course, the neighbor was maybe
2 three or four miles away. There was no real infringement upon
3 the individual and his right of privacy. However, today we have
4 observed an increasingly complex society and we know our area
5 of privacy has decreased, decreased and decreased. The United
6 States Supreme Court, in Griswold versus Connecticut, had to
7 construe the right of privacy as an implied right and in that
8 case held that the right of privacy extended into the marital
9 privacy, that the state did not have a compelling state interest
10 in going into the bedroom of a married couple to prevent contra-
11 ception and they ruled the Connecticut anti-contraception law
12 invalid as invading the right of privacy. Now, we don't know
13 how the interpretations will go from there, what the supreme
14 court will do. We feel in the Montana supreme court, it has
15 recognized the right of privacy, although it has not been ex-
16 pressly stated in the Montana Constitution. What this would do
17 by requiring that this area of privacy be protected unless there
18 is a showing of a compelling state interest, it produces what
19 I call a semi-permeable wall of separation between individual
20 and state; just as the wall of separation between church and
21 state is absolute, the wall of separation we are proposing with
22 this section would be semi-permeable. That is, as a partici-
23 pating member of society, we all recognize that the state must
24 come into our private lives at some point, but what it says is,
25 don't come into our private lives unless you have a good reason

1 for being there. We feel that this, as a mandate to our govern-
2 ment, would cause a complete re-examination and guarantee our
3 individual citizens of Montana this very important right--the
4 right to be let alone, and this has been called the most im-
5 portant right of them all. You have all had placed on your
6 desk the Montana Standard's editorial of February 3, 1972. I
7 think it states it very well. (Reading) Times change. That
8 in a nutshell is why the Constitutional Convention delegates in
9 Helena are working on a new and more modern governmental charter
10 for Montana. Today, with wiretaps, electronic and bugging de-
11 vices, photo surveillance, equipment and computerized data
12 banks, a person's privacy can be invaded without his knowledge
13 and the information so gained can be used in the most insidious
14 ways. It isn't only a careless government that has this power
15 to pry, political organizations, private information gathering
16 firms, and even an individual can now snoop more easily and
17 more effectively than ever before. We certainly hope that such
18 snooping is not as widespread as some persons would have us
19 believe, but with technology easily available and becoming more
20 refined all the time, prudent safeguards against the misuse of
21 such technology are needed. Some may urge and argue that this
22 is a legislative and not a constitutional issue. We think the
23 right of privacy is, like a number of other inalienable rights,
24 a carefully worded constitutional article reaffirming this
25 right is desirable. Wade Dahood of Anaconda, chairman of the

1 Bill of Rights Committee, hit the nail on the head when he said:
2 As government functions and controls expand, it is necessary to
3 expand the rights of the individual. The right to privacy de-
4 serves specific protection. (End reading) Mr. Chairman, I
5 would recommend the adoption of this section.

6 CHAIRMAN GRAYBILL: Very well, is there discussion?
7 Mrs. Babcock.

8 DELEGATE BABCOCK: May I ask a question, please?
9 Would this preclude a corporation made up of family members?

10 DELEGATE CAMPBELL: It's not -- it is intended to
11 protect the individual as we have described it. We do not feel
12 that a corporation is an individual. It can be considered a
13 person but not an individual. We don't think that this would
14 apply in that area.

15 CHAIRMAN GRAYBILL: Mr. Harper.

16 DELEGATE HARPER: Mr. Chairman, I'd like to move an
17 amendment, that on line seven, after the word, infringe, we
18 put a period and strike out the rest of the sentence. On line
19 seven, after the word, infringe, simply put a period and strike
20 out the words, without the showing of a compelling state inter-
21 est, and let this statement about the right of privacy simply
22 stand just right there, barefaced, on its own, that we have
23 the right to privacy as stated. Section eleven gives some lee-
24 way to that for the state in a lawful way to go about invading
25 the right to privacy in the section on searches and seizures.

1 I am a little worried about that phrase, without the showing
2 of a compelling state interest, because that may be interpreted
3 by whatever state agency happens to have an interest in invad-
4 ing my privacy at that particular time.

5 CHAIRMAN GRAYBILL: Very well, the Chair will allow
6 Mr. Harper's amendment to strike the last phrase of section ten
7 and put a period after infringed--strike the words, without
8 the showing of a compelling state interest. Is there discus-
9 sion on Mr. Harper's amendment?

10 Mr. Dahood.

11 DELEGATE DAHOOD: Mr. Chairman, I would agree with
12 Delegate Harper's amendment. The right of privacy is recognized
13 within the law, has been amply defined in case after case with-
14 in the common law area. The last phrase that Delegate Harper
15 seeks to strike does not really serve any necessary purpose in-
16 asmuch as the very definition of the right of privacy, as we
17 know it in the law, takes care of that particular phrase and
18 consequently the other matters where the state is involved
19 would have to be balanced against this right. Our committee
20 does not object to the amendment.

21 CHAIRMAN GRAYBILL: Very well, the issue arises upon
22 Mr. Harper's amendment that would strike the words, without
23 the showing of a compelling state interest, and put a period
24 after infringed on line seven, page six, in section ten. So
25 many as shall be in favor of Mr. Harper's amendment, please say

1 Aye.

2 DELEGATES: Aye.

3 CHAIRMAN GRAYBILL: Opposed, No.

4 DELEGATES: No.

5 CHAIRMAN GRAYBILL: The Ayes have it and so ordered.

6 Is there further discussion of section ten?

7 (No response)

8 CHAIRMAN GRAYBILL: Members of the committee, you have
9 before you on the recommendation of Mr. Campbell, that when this
10 committee does arise and report, after having had under consid-
11 eration section ten, as amended, that this committee recommend
12 that the same be adopted. All in favor of that motion, say Aye.

13 DELEGATES: Aye.

14 CHAIRMAN GRAYBILL: Opposed, No.

15 DELEGATES: (No audible response)

16 CHAIRMAN GRAYBILL: Section ten is adopted. Will the
17 Clerk read section eleven?

18 CLERK SMITH: (Reading) Section eleven, Searches and
19 Seizures: The people shall be secure in their persons, papers,
20 homes and effects, from unreasonable searches and seizures and
21 invasions of privacy, and no warrant to search any place, or
22 seize any person or thing shall issue without describing the
23 place to be searched, or the person or thing to be seized, nor
24 without probable cause, supported by oath or affirmation, re-
25 duced to writing. (End reading) Section eleven, Mr. Chairman.

1 CHAIRMAN GRAYBILL: Mr. Campbell.

2 DELEGATE CAMPBELL: Mr. Chairman, I move that when
3 this committee does arise and report, after having had under
4 consideration section eleven of proposal eight, it recommends
5 that the same be adopted.

6 CHAIRMAN GRAYBILL: Mr. Campbell.

7 DELEGATE CAMPBELL: Mr. Chairman, in this searches
8 and seizures provision, number eleven, we have the outline as
9 is written up on page twenty-four. I won't bother to read that.
10 I'm sure you can go through it if you have any questions. You
11 may note in our rough draft when we did present it to the Con-
12 vention, it did contain specific information regarding electron-
13 ic equipment and surveillance. We at the committee felt very
14 strongly that the people of Montana should be protected as much
15 as possible against eavesdropping, electronic surveillance, and
16 such type of activity. We also recognize that there may in the
17 future be a legitimate need for such in legitimate police ac-
18 tivities. After careful consideration of the rough draft that
19 we did produce, we found that the citizens of Montana were very
20 suspicious of such type of activity. We found from the law en-
21 forcement officers we talked to that there really was not a
22 need and such activity was not taking place at this time. We
23 then decided that what we had done was make something consti-
24 tutional that we may someday want to regulate or even abolish.
25 There were people who testified at our committee that wiretap-

1 ping and such should be abolished expressly in our Constitution.
2 It was our feeling after considering this that it should not be
3 solidified and cemented into the Constitution; it should be made
4 a legislative matter and, as such, we have removed reference to
5 it from the Constitution. It is not prohibited, and we have
6 added in addition that a person's papers, home, effects should
7 be protected as well as the invasions of his privacy. This is
8 a two-pronged approach with the other right of privacy in sec-
9 tion ten. This is one that would affect the officer and the
10 local person enforcing the law. It would not make any more dif-
11 ficult his right to receive a search warrant. It was our feel-
12 ing that express language concerning electronic equipment should
13 be dealt with by the legislature and should not be solidified
14 in the Constitution. Thank you, Mr. Chairman.

15 CHAIRMAN GRAYBILL: Mrs. Robinson.

16 DELEGATE ROBINSON: Mr. Chairman, will Mr. Campbell
17 yield to a question?

18 CHAIRMAN GRAYBILL: Mr. Campbell?

19 DELEGATE CAMPBELL: I will yield.

20 DELEGATE ROBINSON: I am confused by your remarks and
21 by the comments of your committee. It seems to me that your
22 committee very clearly and very strongly wanted to prohibit the
23 future use of wiretapping or any other type of electronic sur-
24 veillance in the state of Montana, and it seems from your com-
25 ments that, you know, there is certainly no justification for

1 it in this state, yet you are leaving it open, are you not, by
2 your saying in essence that it can be done if probable cause can
3 be shown, or if a warrant can be obtained?

4 DELEGATE CAMPBELL: No, we are not mentioning it in
5 the search and seizure provision. There was some testimony be-
6 fore our committee that under the present Montana statutes
7 wiretapping is illegal, or at least under the present state of
8 the law which is, at best, in flux. It was the feeling of some
9 that putting it into the Constitution would legalize it for-
10 ever and we would not be able to change it. If there is going
11 to be any invasion of privacy by intercepting this communica-
12 tion, it will have to be done specifically by the legislature.
13 It was our feeling that we could not present to the Convention
14 and to the state of Montana an absolute prohibition which would
15 forever preclude law enforcement from ever using these things
16 which some day it may need to use.

17 DELEGATE ROBINSON: Mr. President, will Mr. Campbell
18 yield to another question?

19 CHAIRMAN GRAYBILL: Mr. Campbell?

20 DELEGATE CAMPBELL: I will yield, Mr. Chairman.

21 DELEGATE ROBINSON: I don't see how you can really
22 talk about privacy and at the same breath mention the possibil-
23 ity of wiretapping or electronic surveillance. I think that
24 these are probably two of the most incompatible things that you
25 could ever have. I would wonder what the committee or Mr.

1 Campbell's feeling might be. On your committee comments on page
2 twenty-five, you state in line twenty-six and a half and twenty-
3 seven and a half that the committee believes that the privacy
4 of communications should remain inviolate from state level
5 interception. I was wondering if the committee would accept a
6 similar statement -- privacy of communications shall be in-
7 violate -- as an amendment to section eleven, and if your com-
8 mittee really believes what your comments say on page twenty-
9 five?

10 DELEGATE CAMPBELL: Yes, we do really believe it. We
11 would accept it and as a committee we would endorse it.

12 DELEGATE ROBINSON: Mr. President.

13 CHAIRMAN GRAYBILL: Mrs. Robinson.

14 DELEGATE ROBINSON: I have an amendment, then, for
15 section eleven and I'll get it right up there.

16 CHAIRMAN GRAYBILL: Very well, Mrs. Robinson's amend-
17 ment is as follows: (Reading) I move to amend section eleven
18 of the Bill of Rights Committee proposal on line sixteen on page
19 five -- page six, by adding the following sentence on the end
20 thereof: Privacy of communications shall be inviolate. Pri-
21 vacy of communications shall be inviolate.

22 Mrs. Robinson.

23 DELEGATE ROBINSON: Mr. Chairman, this is simply, you
24 know, a very short statement of the committee's comments and
25 language on page twenty-five. I feel that this is something

1 the committee obviously felt very strongly about, yet did not
2 put it in the Constitution. I also feel very strongly about
3 this state not ever, ever engaging in wiretapping. I just fin-
4 ished a book by Schwartz of New York State University dealing
5 very extensively with wiretapping. He cites instances after in-
6 stances where there is no actual proof or even the slightest
7 indication that the gains from wiretapping can ever in any way
8 measure up to the invasion of privacy perpetrated by wiretapping.
9 Privacy is, I think, the right most valued by all men and Jus-
10 tice Brandeis said that a wiretap, simply because it picks up
11 both sides of all conversations of all calls made by or to all
12 persons using telephones under surveillance, by definition con-
13 stitutes a general search, committed not only against a person
14 under suspicion but against many others. I think that if you
15 look at any statistics dealing with wiretapping you will see
16 that the value of wiretapping in no way measures up to the in-
17 fringement on private privacy. For example, in 1968 the fed-
18 eral-state officials overheard four thousand people in sixty-
19 six thousand different conversations, wiretapped conversations.
20 Not a single conviction. In 1969, federal and state officials
21 both overheard thirty-one thousand people in a hundred and
22 seventy-three different conversations. One third of one percent
23 of the people overheard were convicted at a cost of something
24 in excess of six hundred and eighty thousand dollars. Similar
25 situation occurred in 1970 where twenty-five thousand people

1 were listened to in three hundred thousand conversations. One
2 half of the one percent of the people overheard on these wire-
3 taps were convicted, and the cost of such wiretapping and elec-
4 tronic surveillance exceeded three million dollars. None of
5 these wiretaps were -- are include those in national security
6 or in one party surveillance. I think it's quite clear that
7 no case has been or can be made for wiretapping in the state of
8 Montana to have such a blatant disregard for the privacy of
9 individuals.

10 CHAIRMAN GRAYBILL: Mr. Holland.

11 DELEGATE HOLLAND: Will Mrs. Robinson yield for a
12 question?

13 DELEGATE ROBINSON: Yes.

14 DELEGATE HOLLAND: Mrs. Robinson, I appreciate and
15 agree with your statistics on wiretapping, but you understand
16 that the telephone company sometimes uses blocks to locate
17 obscene phone taps -- or phone calls -- that this would also
18 rule out seeing where these were coming from, because you use
19 such a broad term as communications?

20 DELEGATE ROBINSON: Yes.

21 DELEGATE ROBINSON: And may I ask one further ques-
22 tion? Will you yield for one further question?

23 DELEGATE ROBINSON: Yes.

24 DELEGATE HOLLAND: For instance, communications is
25 broad enough for checking mail; that now prisons can't go

1 through the mail of the prisoners to check on what information
2 they might be passing out, including possible plans for escape
3 or to bring weapons?

4 DELEGATE ROBINSON: Well, I think that in the area of
5 mail, which certainly would be covered by federal statutes,
6 federal regulations, that anything a state constitution would
7 write in terms of mail inspection would certainly be superceded
8 by the federal regulations of the mails.

9 DELEGATE HOLLAND: Well, I haven't read the federal
10 statutes on wiretapping but I presume because they are -- there
11 is a certain amount of interstate commerce they might -- it
12 might also -- I have no further questions.

13 Mr. President.

14 CHAIRMAN GRAYBILL: Mr. Holland.

15 DELEGATE HOLLAND: I resist the amendment upon the
16 grounds that, while I am in sympathy with the fact that -- and
17 support the position that there should be no wiretapping or
18 other electronic surveillance, I think communications is too
19 broad because it could be stretched to anything--mail, putting
20 blocks in the line as telephone companies do when women are
21 being bothered by obscene phone calls, to pick up who is doing
22 the calls. Telegrams -- communications could even be notes
23 being passed back and forth in prison or any of a number of
24 different situations, and as I say, while I agree with the
25 thinking behind it, I agree with Mr. Campbell that this thing

1 can be covered much better by legislation, which can be more
2 specific and which can meet the shifting requirements that are
3 required by such statutory matters.

4 CHAIRMAN GRAYBILL: Mr. Brown.

5 DELEGATE BROWN: Mr. President, I feel that this is
6 all immaterial. In section ten we gave the absolute right of
7 privacy without any exceptions regardless of the state interest
8 or any compelling interest, so we've already given them -- we
9 have opened the door and I don't think anything we do now to
10 limit it -- we'd be in direct conflict with section ten, but
11 that's the way the Convention feels. We're going to legislate
12 right through this.

13 CHAIRMAN GRAYBILL: Mr. Campbell.

14 DELEGATE CAMPBELL: Mr. Chairman, I would like to
15 amend Delegate Robinson's amendment by placing the word, oral,
16 between of and communications. Her amendment would then read:
17 Privacy of oral communications shall be inviolate.

18 Mr. President.

19 CHAIRMAN GRAYBILL: Just a moment. Mr. Campbell's
20 amendment would add the word, privacy of oral communications
21 shall be inviolate, adding the word, oral, to Mrs. Robinson's
22 amendment.

23 Mr. Campbell.

24 DELEGATE CAMPBELL: I feel that the concern was in
25 wiretapping and interception of oral communications. This would

1 eliminate any question on written types of letters, notes and
2 that sort of thing, packages through the mail, because there is
3 a legitimate right in many cases to search and to seize. I
4 feel that with oral communications you are not excluding the
5 legitimate law enforcement people who, with the consent of one
6 party, the person who is being threatened by phone calls and
7 things like this, to act on behalf of that victim. The privacy
8 of that individual certainly could be waived with his or her
9 consent and there certainly is no privacy toward the obscene
10 caller. I feel that this would not hinder law enforcement in
11 that respect at all. If there were situations such as kidnap-
12 ping, certainly the federal law would prevail. The federal law
13 does provide a number of areas for wiretapping. They certainly
14 are available. They could be used. For the state of Montana,
15 I do not feel it would be necessary, and it certainly would be
16 expensive, to employ this type of electronic surveillance. I
17 think we would have the adequate protection and I feel that with
18 that amendment it would be acceptable. Thank you, Mr. Chairman.

19 CHAIRMAN GRAYBILL: Mr. Melvin.

20 DELEGATE MELVIN: Will Mrs. Robinson yield to a ques-
21 tion, please?

22 CHAIRMAN GRAYBILL: Mrs. Robinson?

23 DELEGATE ROBINSON: I yield.

24 DELEGATE MELVIN: Mrs. Robinson, did I understand you
25 correctly that you felt this, your amendment would forbid the

1 telephone company and law enforcement officers to trace obscene
2 telephone calls?

3 DELEGATE ROBINSON: I'm not sure whether it would or
4 not. I feel that these things may have to be -- I really don't
5 know how technically they do it -- if they do it by a bug or by
6 tapping lines. I know that any time I have had an obscene
7 phone call, they can't do -- they are never able to get it any-
8 way.

9 (Laughter)

10 DELEGATE MELVIN: Thank you, Mrs. Robinson.

11 DELEGATE ROBINSON: But, I'm not sure how they do it,
12 or how they don't do it.

13 DELEGATE MELVIN: Thank you, Mrs. Robinson.

14 Mr. Chairman.

15 CHAIRMAN GRAYBILL: Mr. Melvin.

16 DELEGATE MELVIN: I have to speak in opposition to
17 Mrs. Robinson's amendment for that one reason. One of the
18 nastiest, most difficult offenses that is reported to police
19 departments and sheriffs' offices is the obscene phone caller
20 and in spite of the statistics that have been spread here this
21 evening, there have been some identified. It has not always
22 resulted in criminal prosecution. Sometimes it has resulted in
23 treatment by appropriate psychiatrists or others. But, I do
24 feel that this is an area that it's only possible to reach it
25 in this manner. Thank you.

1 CHAIRMAN GRAYBILL: Mr. Vermillion.

2 DELEGATE VERMILLION: Would Mr. Melvin yield to a
3 question, please?

4 DELEGATE MELVIN: I yield.

5 DELEGATE VERMILLION: Mr. Melvin, I was wondering now
6 on these obscene phone calls, does the receiving party know that
7 the telephone company is intercepting the message?

8 DELEGATE MELVIN: Yes.

9 DELEGATE VERMILLION: Well, then, this -- I'm wonder-
10 ing if this would be a private communication then? It might
11 be that in this instance this proviso would cover that. I'm
12 wondering --

13 DELEGATE MELVIN: Well, I could only assume that a
14 court would interpret communication as a dialogue between two
15 people. Does that answer your question?

16 CHAIRMAN GRAYBILL: Mr. Dahood.

17 DELEGATE DAHOOD: Let me answer that question, Mr.
18 Chairman. First of all, this does not in any way relate to the
19 obscene phone call situation nor does it relate to the ability
20 of the telephone company to make the traces. The logic and the
21 reason is this. All personal rights, constitutional or other-
22 wise, may be waived. Lady A is receiving the obscene phone
23 calls. She waives her right and grants the telephone company
24 the right to intercept that communication. The individual that
25 is making the call does not have the right of privacy with re-

1 spect to violating the law and making the obscene phone calls,
2 so as a consequence, we are not interfering with anyone's rights
3 by having the telephone company attempt to intercept and dis-
4 cover and determine who the caller is. We are protecting the
5 right of privacy, so as a consequence, may I say that that sug-
6 gestion would be one that we would not have to worry about un-
7 der the law and the amendment proposed by Delegate Robinson
8 would not in any way interfere with that situation.

9 CHAIRMAN GRAYBILL: Mr. Holland.

10 DELEGATE HOLLAND: Mr. Chairman, I will have to admit
11 that Mrs. Robinson is probably better endowed for obscene phone
12 calls than I am, and I'll have to yield to her knowledge in
13 that respect.

14 (Laughter)

15 CHAIRMAN GRAYBILL: I'm sure you do so reluctantly,
16 Mr. Holland.

17 (Laughter)

18 CHAIRMAN GRAYBILL: Mr. Davis.

19 DELEGATE DAVIS: Mr. President, would Mrs. Robinson
20 yield to a question?

21 DELEGATE ROBINSON: If it's not obscene.

22 (Laughter)

23 DELEGATE DAVIS: Mrs. Robinson, if there had been the
24 crime of murder committed and you and I were standing here and
25 I said that I shot that dirty s.o.b., not to be obscene, would

1 that be an oral communication?

2 DELEGATE ROBINSON: Well, yes.

3 DELEGATE DAVIS: And then you would not want to be in
4 a position where you could testify in court that I made that
5 statement?

6 DELEGATE ROBINSON: Oh, I think that is totally ir-
7 relevant.

8 DELEGATE DAVIS: Not if it says in the bill of rights
9 that privacy of oral communications is inviolate, is it?

10 DELEGATE ROBINSON: Are you not -- are you not, in
11 essence, giving up your right to total privacy when you tell me
12 what you had done?

13 DELEGATE DAVIS: You're guaranteeing that I can't give
14 up my right to total privacy. There's nothing in here about a
15 waiver, is there?

16 DELEGATE ROBINSON: Oh, no. There's a difference be-
17 tween your knowing you're telling me and you know whether there
18 is someone around us listening, or if it's just you and I;
19 whereas, on the telephone you may tell me that and you may sus-
20 pect that I'm the only one listening, but you certainly may not
21 know that.

22 DELEGATE DAVIS: Mr. President, I would have to rise
23 in opposition to this. After twenty years in law enforcement
24 there's still some rights of a citizen that have to be protect-
25 ed. In law enforcement, it seems to me that oral communications

1 could be a communication that was overheard if I was telephon-
2 ing someone. It could be a communication overheard on radios
3 between a stake-out, as was demonstrated in London a while back,
4 where they overheard them talking about robbing the bank. It
5 seems like it goes a lot further than electronic surveillance
6 and wiretapping, which I think they originally had in mind. If
7 they could clear it up in that regard it might be acceptable.

8 CHAIRMAN GRAYBILL: Mrs. Eck.

9 DELEGATE ECK: Mr. Chairman, it's not very often that
10 I have a little bit of legal knowledge to impart but I think
11 that there was a case just in this last year that involved some-
12 thing very much like you described, where it was not a case of
13 wiretapping, it was a case of a sister-in-law or a sister who
14 was listening in on a communication and the court ruled that
15 this evidence could not be used because it was a violation of
16 privacy. This had nothing to do with wiretapping, but I think
17 that in this case it would not be admissible evidence.

18 CHAIRMAN GRAYBILL: Mr. Gysler was up next.

19 DELEGATE GYSLER: Mr. Chairman, on page twenty-five,
20 line thirteen, I read: The committee had incorporated into
21 the tentative rough draft safeguards for wiretapping, electronic
22 surveillance and other means of communications interceptions.
23 After hearing further testimony, the committee decided to de-
24 lete any reference to interceptions of communications. And yet
25 now, the mere mention of it on the floor and they say, we're

1 for it. I don't know. They really leave me in kind of a state
2 of confusion and so I think I will go along with their written
3 testimony and vote against the amendment.

4 CHAIRMAN GRAYBILL: Mr. Dahood.

5 DELEGATE DAHOOD: Mr. Chairman, I would like to re-
6 spond to what Delegate Gysler has to say and I think there is
7 some basis for what he does say. First of all, we agreed that
8 we would go along with an amendment that would prohibit elec-
9 tronic surveillance in the state of Montana. The committee is
10 still of that opinion. After listening to testimony, after
11 examining briefs that were submitted to us, after analyzing the
12 situation, it is inconceivable to any of us that there would
13 ever exist a situation in the state of Montana where electronic
14 surveillance could ever be justified. And the thinking through-
15 out the United States is, electronic surveillance shall be jus-
16 tified only in matters involving national security, perhaps in
17 matters involving certain heinous federal crimes where the sit-
18 uation is such that in those instances we must risk the right
19 of individual privacy because there is a greater purpose to be
20 served. But, within the area of the state of Montana, we can-
21 not conceive of a situation where we could ever permit electron-
22 ic surveillance and our intention was, in responding to the pro-
23 posed amendment, that we would not object to it, was to allow
24 an amendment that would prohibit electronic surveillance in the
25 state of Montana. That is the committee explanation.

1 CHAIRMAN GRAYBILL: Very well, the issue is on Mrs.
2 Robinson's motion to amend section eleven by adding the phrase:
3 Privacy of oral -- no, let's see, it's on Mr. Campbell's amend-
4 ment to add the word, oral, to Mrs. Robinson's amendment so it
5 would read: Privacy of oral communications shall be inviolate.

6 Mr. Dahood.

7 DELEGATE DAHOOD: Mr. Chairman, I think I'm compelled
8 to state that that particular language, with all due respect to
9 Delegate Robinson, does present some problems. I'm not satis-
10 fied in my own mind at this time that that is going to reach
11 the electronic surveillance that we want to proscribe and I
12 think that perhaps that amendment might be withdrawn and perhaps
13 the term, electronic surveillance, put in the phrase that is
14 suggested by way of amendment.

15 CHAIRMAN GRAYBILL: Mrs. Robinson.

16 DELEGATE ROBINSON: Mr. President, I would be glad to
17 withdraw that amendment. The wording bothers me, too, and I
18 took it directly from the committee report. But -- so anything
19 that Mr. Dahood could come up with that would meet my objectives
20 would be fine.

21 CHAIRMAN GRAYBILL: Do I understand, Mrs. Robinson,
22 that you wish to withdraw your amendment?

23 DELEGATE ROBINSON: Yes.

24 CHAIRMAN GRAYBILL: Mr. Campbell, are you going to
25 withdraw your oral word?

1 DELEGATE CAMPBELL: Yes, I will.

2 CHAIRMAN GRAYBILL: All right, both Mrs. Robinson's
3 and Mr. Campbell's amendments are withdrawn.

4 Mrs. Babcock.

5 DELEGATE BABCOCK: Mr. Chairman, could I ask Mr.
6 Dahood a question?

7 CHAIRMAN GRAYBILL: Mr. Dahood?

8 DELEGATE DAHOOD: I yield.

9 DELEGATE BABCOCK: When the governor has a device on
10 his telephone that has a beep on it when someone calls in and
11 then your voice is recorded, when you call into the governor's
12 mansion, is that electronic surveillance?

13 DELEGATE DAHOOD: It's electronic, but it's done with
14 the consent of the participants in that conversation.

15 CHAIRMAN GRAYBILL: Very well, the issue before us
16 is section eleven, unamended.

17 Mr. Loendorf.

18 DELEGATE LOENDORF: There are no present amendments
19 before us then regarding wiretapping, et cetera?

20 CHAIRMAN GRAYBILL: Mr. Dahood's pencil is busy but
21 there are none before us.

22 DELEGATE LOENDORF: May I ask Mr. Campbell a couple
23 of questions while Mr. Dahood is writing?

24 (Laughter)

25 CHAIRMAN GRAYBILL: Mr. Campbell, would you yield?

1 DELEGATE CAMPBELL: I will yield.

2 DELEGATE LOENDORF: There are a couple of things that
3 concern me here, Bob, although not too much because I know the
4 federal case law protects us. But, assuming there was no fed-
5 eral law, in section ten we now provide for a right of privacy
6 which will not be infringed. In section eleven, which appears
7 now to me to be an exception to section ten, we allow for in-
8 vasions of privacy on a showing of probable cause. Now, this
9 leads me to believe that, in the example you gave, the contra-
10 ception case, that the police could go into court and on a mere
11 showing of probable cause that a crime is being committed, ob-
12 tain the search warrant to go in and search unless our state
13 court, as the federal court has done, invented a better right
14 of privacy than I think we have stated here. Since we've re-
15 moved the provision that a compelling state interest also be
16 shown, I think the officers could merely go in and I'm wondering
17 if you think we've really changed the law at all by the addi-
18 tion of section ten and the additions to section eleven?

19 DELEGATE CAMPBELL: I see your objection and I would
20 agree with your reasoning. I certainly would have no objection
21 and would heartily support an amendment you might have to de-
22 lete invasions of privacy in section eleven to leave it in its
23 original form.

24 CHAIRMAN GRAYBILL: Mr. Loendorf, you have been in-
25 vited to amend section eleven by dropping the words, and in-

1 vasions of privacy. Do you wish to?

2 DELEGATE LOENDORF: I will leave that to the committee
3 to do that. I just wished to point that out.

4 CHAIRMAN GRAYBILL: All right, the committee -- Mr.
5 Campbell now moves that we strike on line eleven the words, and
6 invasions of privacy, from section eleven since we have taken
7 the clause out up above, because otherwise the modifier, un-
8 reasonable, seems to weaken section ten. Mr. Campbell, your
9 amendment to strike invasions of privacy will be allowed. Is
10 there discussion? Mrs. Robinson, do you want to discuss this
11 new matter?

12 DELEGATE ROBINSON: Yes, because this was the object-
13 ion that I had, because I think that in section ten we did pro-
14 tect the right of privacy but in section eleven, as it was
15 written, it seemed to me that an invasion of privacy could be
16 -- would be O.K. as long as you had a warrant or could show
17 probable cause or these other things. To me an invasion of
18 privacy is wiretapping and electronic surveillance. If you
19 eliminate invasion of privacy from this section, then you have
20 precluded wiretapping and electronic surveillance and I'm
21 happy.

22 CHAIRMAN GRAYBILL: Very well, the issue is on Mr.
23 Campbell's motion to strike the words, and invasions of privacy,
24 on lines eleven and twelve of section eleven on page six. So
25 many as shall be in favor of that motion, say Aye.

1 DELEGATES: Aye.

2 CHAIRMAN GRAYBILL: Opposed, No.

3 DELEGATES: (No audible response)

4 CHAIRMAN GRAYBILL: The Ayes have it and the offensive
5 words are stricken. Now, are there further amendments to sec-
6 tion eleven?

7 (No response)

8 CHAIRMAN GRAYBILL: Members of the committee, you
9 have before you for your consideration, upon the recommendation
10 of Mr. Campbell, that when this committee does arise and report,
11 after having had under consideration section eleven, as amended,
12 that it recommend the same be adopted. So many as shall be in
13 favor of that motion, please say Aye.

14 DELEGATES: Aye.

15 CHAIRMAN GRAYBILL: So many as shall be opposed, say
16 No.

17 DELEGATES: (No audible response)

18 CHAIRMAN GRAYBILL: It's adopted. Members of the
19 committee, the Chair is quite pleased that we've gone as far
20 as we've gone and I see a section coming up that might take
21 some time, so I think that maybe we should go home. Mr. Murray,
22 would you like to make a motion?

23 DELEGATE MURRAY: Mr. Chairman, I move that the com-
24 mittee rise, report progress and ask leave to sit again.

25 CHAIRMAN GRAYBILL: The motion has been made that the

1 committee rise and report progress. All in favor of that motion
2 say Aye.

3 DELEGATES: Aye.

4 CHAIRMAN GRAYBILL: Opposed?

5 DELEGATES: (No audible response)

6 CHAIRMAN GRAYBILL: So ordered.

7
8 (Proceedings moved from Committee of the Whole
9 into Convention. President Graybill in Chair.)

10 PRESIDENT GRAYBILL: If you'll just remain for a
11 minute now, we'll finish up. Will the Clerk please read the
12 title of the committee report?

13 CLERK SMITH: (Reading) March 7, 1972. Mr. Presi-
14 dent, we, your Committee of the Whole, having had under consid-
15 eration report number eight of the Committee of the Bill of
16 Rights recommend that the committee rise and report progress
17 and beg leave to sit again. Signed Graybill, chairman. (End
18 reading).

19 PRESIDENT GRAYBILL: Members of the committee, hear-
20 ing no objection, we will not read the entire committee report.
21 So many as shall be in favor -- oh, Mr. Murray, do you want to
22 make the motion?

23 DELEGATE MURRAY: Mr. Chairman, I move that we adopt
24 -- Mr. President, I move that we adopt the Committee of the
25 Whole report.

1 PRESIDENT GRAYBILL: The motion is to adopt the Com-
2 mittee of the Whole report. All in favor, say Aye.

3 DELEGATES: Aye.

4 PRESIDENT GRAYBILL: Opposed, No.

5 DELEGATES: (No audible response)

6 PRESIDENT GRAYBILL: So ordered.

7 Mr. Murray.

8 DELEGATE MURRAY: Mr. President, I move the Convention
9 adjourn until the hour of nine A.M., March 8, 1972.

10 PRESIDENT GRAYBILL: The motion is to adjourn until
11 nine A.M., tomorrow morning. All in favor, please say Aye.

12 DELEGATES: Aye.

13 CHAIRMAN GRAYBILL: Opposed, No.

14 DELEGATES: (No audible response)

15 CHAIRMAN GRAYBILL: Thank you very much for coming
16 tonight.

17

18 (Convention adjourned at 10:13 P.M.)

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1 MONTANA CONSTITUTIONAL CONVENTION

2 March 8, 1972 40th Convention Day Convention Hall
3 9:10 o'clock A.M. Helena, Montana
4

5 PRESIDENT GRAYBILL: The Convention will be in
6 order. If you'll all rise, Delegate Harbaugh will lead us in
7 the Invocation.

8 DELEGATE HARBAUGH: Let us pray. God, our Father,
9 we do not begin our days here with an Invocation just for the
10 sake of ritual, nor because it is traditional to do so, but
11 because we sense that unless the Lord builds the house, those
12 who build labor in vain. We do not know what the future
13 holds, yet we strive to produce a guide for that future. Give
14 us grace today to believe that even though we cannot look
15 beyond our own time with clarity, you hold all time in your
16 hands through Jesus Christ, our Lord, Amen.

17 PRESIDENT GRAYBILL: We'll take attendance by voting
18 Aye on the voting machines.

19 CLERK HANSON: Delegate Berg, Delegate Bowman,
20 Delegate Brown, Delegate Cate, Delegate Choate, Delegate
21 Dahood. Mr. President, may Delegate Eskildsen be excused,
22 please?

23 PRESIDENT GRAYBILL: He may.

24 CLERK HANSON: Delegate Berg, Delegate Bowman,
25 Delegate Brown, Delegate Choate, Delegate Toole, Delegate Berg.

1	PRESIDENT GRAYBILL: Take the vote.			
2	Aasheim	- Present	Champoux	- Present
3	Anderson, J.	- Present	Choate	- Absent
4	Anderson, O.	- Present	Conover	- Present
5	Arbanas	- Present	Cross	- Absent
6	Arness	- Present	Dahood	- Present
7	Aronow	- Present	Davis	- Present
8	Artz	- Present	Delaney	- Present
9	Ask	- Present	Driscoll	- Present
10	Babcock	- Present	Drum	- Present
11	Barnard	- Present	Eck	- Present
12	Bates	- Present	Erdmann	- Present
13	Belcher	- Present	Eskildsen	- Excused
14	Berg	- Absent	Etchart	- Present
15	Berthelson	- Present	Felt	- Present
16	Blaylock	- Present	Foster	- Present
17	Blend	- Present	Furlong	- Present
18	Bowman	- Absent	Garlington	- Present
19	Brazier	- Present	Graybill	- Present
20	Brown	- Absent	Gysler	- Present
21	Bugbee	- Present	Habedank	- Present
22	Burkhardt	- Present	Hanson, R. S.	- Present
23	Cain	- Present	Hanson, R.	- Present
24	Campbell	- Present	Harbaugh	- Present
25	Cate	- Present	Harlow	- Present

1	Harper	-	Present	Payne	-	Present
2	Harrington	-	Present	Pemberton	-	Present
3	Heliker	-	Present	Rebal	-	Present
4	Holland	-	Present	Reichert	-	Present
5	Jacobsen	-	Present	Robinson	-	Present
6	James	-	Present	Roeder	-	Present
7	Johnson	-	Present	Rollins	-	Present
8	Joyce	-	Present	Romney	-	Present
9	Kamhoot	-	Present	Rygg	-	Present
10	Kelleher	-	Present	Scanlin	-	Present
11	Leuthold	-	Present	Schiltz	-	Present
12	Loendorf	-	Present	Siderius	-	Present
13	Lorello	-	Present	Simon	-	Present
14	Mahoney	-	Present	Skari	-	Present
15	Mansfield	-	Present	Sparks	-	Present
16	Martin	-	Present	Speer	-	Present
17	McCarvel	-	Present	Studer	-	Present
18	McDonough	-	Present	Sullivan	-	Present
19	McKeon	-	Present	Swanberg	-	Present
20	McNeil	-	Present	Toole	-	Present
21	Melvin	-	Present	Van Buskirk	-	Present
22	Monroe	-	Present	Vermillion	-	Present
23	Murray	-	Present	Wagner	-	Present
24	Noble	-	Present	Ward	-	Present
25	Nutting	-	Present	Warden	-	Present

1 Wilson - Present Woodmansey - Present

2 CLERK HANSON: Mr. President, ninety-five Delegates
3 present, four absent and one excused.

4 PRESIDENT GRAYBILL: Very well. The journal may so
5 show. Order of Business Number One, Reports of Standing
6 Committees?

7 CLERK HANSON: None, sir.

8 PRESIDENT GRAYBILL: Order of Business Number Two,
9 Report of Select Committees?

10 CLERK HANSON: None.

11 PRESIDENT GRAYBILL: Order of Business Number Three,
12 Communications?

13 CLERK HANSON: Helena, Montana, March 7, 1972,
14 Honorable Leo Graybill, Jr., President, Montana Constitutional
15 Convention, Capitol, Helena, Montana, Dear Mr. President:
16 In accordance with the provisions of Section 15 (2) Extra-
17 ordinary Senate Bill Number Six, Chapter Extraordinary Number
18 One, Laws of Montana 1971, the license of Roy B. Crosby, Jr.,
19 license number 58-72 has been reinstated as of March 7, 1972.
20 Sincerely yours, Frank Murray, Secretary of State. March 7,
21 1972, Honorable Leo Graybill, Jr., President, Montana Con-
22 stitutional Convention, Capitol, Helena, Montana, Dear Mr.
23 President: In accordance with the provisions of Section 15(2)
24 Extraordinary Senate Bill Number Six, Chapter Extraordinary
25 Number One, Laws of Montana 1971, the license of Gene A. Tuma,

1 license number 72-72 has been reinstated as of March 7, 1972.

2 Sincerely yours, Frank Murray, Secretary of State.

3 PRESIDENT GRAYBILL: Are there other communications?

4 CLERK HANSON: None, sir.

5 PRESIDENT GRAYBILL: Order of Business Number Four,
6 Introduction and Reference of Proposals?

7 CLERK HANSON: None.

8 PRESIDENT GRAYBILL: Order of Business Number Five.

9 Mr. Murray.

10 DELEGATE MURRAY: Mr. President. Due to the press
11 of business that we have today, I move that we pass this
12 Order of Business and the voting on the General Government
13 articles at this time.

14 PRESIDENT GRAYBILL: Mr. Murray's motion is to pass
15 Order of Business Number Five and take up the General Govern-
16 ment articles tomorrow. All in favor, say Aye.

17 DELEGATES: Aye.

18 PRESIDENT GRAYBILL: Opposed, No.

19 (No response)

20 PRESIDENT GRAYBILL: Order of Business Number Six,
21 Adoption?

22 CLERK HANSON: None.

23 PRESIDENT GRAYBILL: Order of Business Number Seven,
24 Motions and Resolutions?

25 CLERK HANSON: None, sir.

1 PRESIDENT GRAYBILL: Order of Business Number Eight,
2 Unfinished Business?

3 Mr. Champoux.

4 DELEGATE CHAMPOUX: Mr. President, fellow delegates.
5 It is my pleasure this morning to introduce the pages for
6 this week. Would all the pages come forward at this time?
7 As I call your name, please stand. The first one we have is
8 Lois Kamp. She's the niece of Mrs. Grace Bates. Lois, by
9 the way, is from Manhattan. Leslie Ann Newman from Columbia
10 Falls; Carl Rostad from Martinsdale, Montana; Patsy Seitz
11 from Broadview; Marsha Murray from Kalispell. This is the
12 daughter of our fellow delegate, Marshall Murray; Carolyn
13 Patterson from Missoula; Brad Van Wormer from Missoula; Orville
14 Granger from the Fort Peck Reservation; Carey Baire from
15 Helena; Melody Jackson from Helena and Tala Skari from Chester.
16 She's the daughter of Carman Skari. We want to welcome you
17 and we hope you enjoy your time here. Now, one of you will
18 come forward and address the convention.

19 UNIDENTIFIED PAGE: Ladies and gentlemen of the
20 convention. I feel I can only respond like the pages before
21 us have. It is a great honor to serve this assembly. The
22 next two weeks are the final weeks of the convention. They
23 will probably be the most chaotic, the most demanding and the
24 most trying upon the convention, for now you will have to
25 adopt the document that you have compiled. It'll be up to

1 your discretion whether you think the document is a good enough
2 one to submit to the public. We wish you well. I thank you.

3 (Applause)

4 PRESIDENT GRAYBILL: We want to thank all of you
5 pages and we're sure we'll have a very pleasant week with you.
6 I'm sure you'll make it much easier for us to do that job that
7 you described as difficult. Thank you very much. Your names
8 will appear in today's journal and you will be given a copy
9 that you can take home with you. Order of Business Number
10 Nine, Special Orders?

11 CLERK HANSON: None.

12 PRESIDENT GRAYBILL: Order of Business Number Ten,
13 General Orders of the Day?

14 Mr. Murray.

15 DELEGATE MURRAY: Mr. President. I move that the
16 convention resolve itself into Committee of the Whole for
17 consideration of business under General Orders.

18 PRESIDENT GRAYBILL: Very well. The motion is to
19 resolve this convention into Committee of the Whole for the
20 purpose of considering matters under General Orders. All in
21 favor, say Aye.

22 DELEGATES: Aye.

23 PRESIDENT GRAYBILL: Opposed, No.

24 (No response)

25 PRESIDENT GRAYBILL: Mr. Clerk.

1 (Committee of the Whole)

2 CLERK HANSON: March 8, 1972; The following com-
3 mittee proposals are now on General Orders: Bill of Rights,
4 Education, Public Health, Local Government, General Govern-
5 ment, Style and Drafting Number Four. Mr. President.

6 CHAIRMAN GRAYBILL: Mr. Murray.

7 DELEGATE MURRAY: Mr. Chairman. By way of rearrang-
8 ing the calendar somewhat, I move that the Committee of the
9 Whole take up the consideration of the executive article
10 report from Style and Drafting at this time.

11 CHAIRMAN GRAYBILL: Very well. It is moved that we
12 take up the executive article of Style and Drafting. All in
13 favor, say Aye.

14 DELEGATES: Aye.

15 CHAIRMAN GRAYBILL: Opposed, No.

16 (No response)

17 CHAIRMAN GRAYBILL: That's booklet number four.
18 Mr. Schiltz.

19 DELEGATE SCHILTZ: Mr. Chairman. I move that when
20 this committee does arise and report after having had under
21 consideration section one of Style and Drafting Report Number
22 Four, it recommend the same do pass. Mr. Chairman, section
23 one, sub one.

24 CHAIRMAN GRAYBILL: Mr. Schiltz.

25 DELEGATE SCHILTZ: In sub one, we only made style

1 changes. I would call your attention to the word on line sev-
2 en, department. In our comment, we noted that this has a
3 different meaning and intent than department does in section
4 seven of this same article, where they're talking about the
5 executive department under reorganization.

6 CHAIRMAN GRAYBILL: Ladies and gentlemen, we're on
7 page nine, in case you're not with us, if you want to follow
8 the changes of the executive Style and Drafting article num-
9 ber four. Page nine, section one, number one, line six. Is
10 there discussion of section one, sub one? All in favor of
11 section one, sub one, say Aye.

12 DELEGATES: Aye.

13 CHAIRMAN GRAYBILL: Opposed.

14 (No response)

15 CHAIRMAN GRAYBILL: It's adopted. Mr. Schiltz.

16 DELEGATE SCHILTZ: I move that when this committee
17 does arise and report after having had under consideration
18 section one, sub two, of the Style and Drafting Report Number
19 Four, it recommend the same be adopted. Mr. Chairman.

20 CHAIRMAN GRAYBILL: Mr. Schiltz.

21 DELEGATE SCHILTZ: Only style changes, nothing sig-
22 nificant.

23 CHAIRMAN GRAYBILL: Any discussion on sub two? All
24 in favor of section one, sub two, say Aye.

25 DELEGATES: Aye.

1 CHAIRMAN GRAYBILL: Opposed.
2 (No response)
3 CHAIRMAN GRAYBILL: It's adopted. Sub three.
4 DELEGATE SCHILTZ: Mr. Chairman. I move that when
5 this committee does arise and report after having had under
6 consideration section one, sub three, of the Style and Draft-
7 ing Report Number Four, it recommend the same be adopted.
8 Mr. Chairman.
9 CHAIRMAN GRAYBILL: Mr. Schiltz.
10 DELEGATE SCHILTZ: We combined sub three and sub
11 four. Otherwise, there are no significant differences.
12 CHAIRMAN GRAYBILL: Sub three and sub four of the
13 original article having been combined, is there any discussion
14 of sub three? If not, all in favor of adopting sub three,
15 say Aye.
16 DELEGATES: Aye.
17 CHAIRMAN GRAYBILL: Opposed.
18 (No response)
19 CHAIRMAN GRAYBILL: It's adopted. Section two.
20 Mr. Schiltz.
21 DELEGATE SCHILTZ: Mr. Chairman. I move that when
22 this committee does arise and report after having had under
23 consideration section two, sub one, of the Style and Drafting
24 Report Number Four, it recommend the same be adopted. Mr.
25 Chairman.

1 CHAIRMAN GRAYBILL: Mr. Schiltz.

2 DELEGATE SCHILTZ: We rearranged the sequence of
3 executive officers, and then we will retain that same sequence
4 throughout. They were mixed up a little bit in the various
5 sections. Style changes only.

6 CHAIRMAN GRAYBILL: Is there any discussion of
7 section two, sub one? All in favor of that section, say Aye.

8 DELEGATES: Aye.

9 CHAIRMAN GRAYBILL: It's adopted. Sub two, Mr.
10 Schiltz.

11 DELEGATE SCHILTZ: Mr. Chairman. I move that when
12 this committee does arise and report after having had under
13 consideration section two, sub two, of the Style and Drafting
14 Report Number Four, it recommend the same be adopted. Mr.
15 Chairman.

16 CHAIRMAN GRAYBILL: Mr. Schiltz.

17 DELEGATE SCHILTZ: Mr. Chairman, no changes except
18 for style. We picked up the words used throughout, in line
19 twenty-six, provided by law, instead of, as may be prescribed.
20 That's all.

21 CHAIRMAN GRAYBILL: Is there any discussion on sub
22 two? All in favor, say Aye.

23 DELEGATES: Aye.

24 CHAIRMAN GRAYBILL: Opposed.

25 (No response)

1 CHAIRMAN GRAYBILL: It's adopted. Section three,
2 sub one, Mr. Schiltz.

3 DELEGATE SCHILTZ: Mr. Chairman. I move that when
4 this committee does arise and report after having had under
5 consideration section three, sub one, of the Style and Drafting
6 Report Number Four, it recommend the same be adopted. Mr.
7 Chairman.

8 CHAIRMAN GRAYBILL: Mr. Schiltz.

9 DELEGATE SCHILTZ: Mr. Chairman, only style changes.
10 Nothing unusual that should be called to the attention of the
11 body.

12 CHAIRMAN GRAYBILL: Is there any discussion of
13 section three, sub one?

14 Mr. Campbell.

15 DELEGATE CAMPBELL: I move that we suspend the rules
16 to reconsider the age qualifications in this section.

17 CHAIRMAN GRAYBILL: All right. Do you want to send
18 some short writing to the Chair so we have it for the record
19 that you are suspending the rules on three, sub one, for the
20 purpose of considering the age qualifications?

21 DELEGATE CAMPBELL: And I would move that the lang-
22 uage of the majority report be reintroduced and accepted.

23 CHAIRMAN GRAYBILL: Mr. Campbell is moving that we
24 suspend the rules on section three, sub one, which has the age
25 qualifications involved. If the rules are suspended, he will

1 move to reconsider to put in the majority report's original
2 age qualifications. Is there further debate?

3 Mr. Campbell.

4 DELEGATE CAMPBELL: Mr. Chairman. It seems in our
5 history, there are certain challenges to each Constitutional
6 Convention. In 1889, the challenge of that day was to allow
7 the legislature to someday allow women to have the right to
8 vote. In that particular convention, a delegate from Missoula
9 suggested such a radical thing in his time. Wyoming had
10 previously allowed women the right to vote and full partici-
11 pation within the system, for twenty years prior to our Con-
12 stitutional Convention in 1889. The arguments used at that
13 convention were the same arguments that are used today against
14 the young people. They are not responsible. They are not
15 intelligent. They are not qualified to hold our public of-
16 fices, and they're not qualified to vote. The same fear was
17 expressed that the people of Montana could not accept such a
18 change. I feel that they did not measure up to the challenge
19 of their time, the challenge of women suffrage. Also, I
20 feel that today the challenge to this convention is a chal-
21 lenge of the younger generation who, unlike the women of 1889,
22 already have the right to vote. They're already halfway in
23 the system. What I'm asking you now, is to reconsider, to
24 suspend the rules, to reopen this, not to lock into our con-
25 stitution artificial age barriers which the legislature can

1 never, in the future, deal with or lower. I think we would
2 make the same mistake in this convention as they made in 1889.
3 As a result of their refusal to stand up to the challenge of
4 their time, women were denied the right to vote in Montana
5 and the legislature could not do anything about it for an ad-
6 ditional twenty-five years after that Constitutional Convention.
7 It was not until 1914 that women were finally allowed to have
8 the right to vote. That was an embarrassing forty-five years
9 after our neighboring state of Wyoming had set the national
10 example by being courageous enough to allow women to have full
11 participation within the system. I really feel that the argu-
12 ments that were used against the young people, as against the
13 women of 1889, reflected a basic lack of confidence in the
14 people of Montana and the democratic system, to accept a new
15 group of responsible citizens. The Constitutional Convention
16 has pointed out -- has held this -- as what they felt was
17 reasonable. I think the young people would not fear this
18 responsibility. I think they would accept it, and I think
19 that would be the last of the artificial age restriction. I
20 don't feel that we can maintain these artificial barriers.
21 Governor Anderson, when he opened up this convention, he said,
22 do not be afraid to challenge the people of Montana. Do not
23 belittle them and feel they cannot accept some new ideas.
24 President Graybill, when he opened this convention said, our
25 greatest natural resource of the state of Montana is our youth.

1 Let's protect them. Let's try to encourage them to stay with-
2 in the state. By setting this artificial age barrier, you're
3 certainly not giving them political equality. You're not
4 giving them the respect they deserve. With me today is some-
5 one who has worked her entire life fighting artificial bar-
6 riers to public office -- a person who is rare in that she
7 has received the recognition in her time, that few people
8 with great ideas ever realize. She is a person who has fought
9 the stigma that men had against women in 1889. She's the
10 first congresswomen for the United States of America, a woman
11 we can be proud of. She's the first native Montanan ever
12 elected to congress, who supports this position, but because
13 of our rules, cannot speak to it today. She has, more than
14 any one person, sought to reduce the artificial age restrict-
15 ions. She believes in the democratic system. She believes
16 that the voters will elect the person they feel best qualified.
17 Miss Jeanette Rankin. She is with me today. Because of our
18 rules, unless someone requests it and it's approved, she
19 cannot speak. She will be appearing later. I think that
20 Montana could, as Wyoming, accept this challenge. I know it's
21 a big idea. North Dakota, as you know, went to twenty-one;
22 they would not go down to eighteen. The average voting age
23 in the 1970 election, for the state of Montana, was forty-
24 seven years old. There is no mammoth wave of eighteen year
25 old voters that are going to dominate any election. We have

1 to have confidence in our people. We hit the low point of this
2 convention, in my opinion, when we reversed our fifty-nine to
3 thirty-one decision to follow the majority report in the
4 executive article. We reversed it, because at that time in
5 the convention, we had little confidence in ourselves and
6 even less in the electorate. Since that time, we have develop-
7 ed backbone. We have faced issues and reform. We have given
8 strength. Most of the mistakes, the criticisms that we've
9 made for not making enough reform, for having the full seven
10 offices in the executive, are things that I think the majority
11 of us now regret. They are slowly congealing into the cement
12 of Montana history. They're all but beyond us and we can
13 almost not change it. As you know, in the Bill of Rights, we
14 have an article on adult rights. On the executive, if you
15 will allow to suspend the rules to reconsider this qualifi-
16 cation, it would be the first step in producing the type of
17 reform, the type of recognition of our young people, that I
18 think they deserve. I did not see any wave of joy coming
19 from the young people that this responsibility would not be
20 imposed upon them. I felt a great deal of dismay that we
21 lack the trust and confidence in them, the voters of the state.
22 With that, Mr. Chairman, I would request that we suspend the
23 rules on this section to reconsider our decision. Thank you.

24 CHAIRMAN GRAYBILL: Is there other discussion on
25 the motion to suspend the rules?

1 Mrs. Bugbee.

2 DELEGATE BUGBEE: Mr. Chairman. I would simply like
3 to amplify what Mr. Campbell has said and say that I think
4 this is one of the poorest things we've done in the constitu-
5 tion so far. It is simply not a constitutional matter, and
6 it is writing into our document, a rigidity that does not
7 belong there. Thank you.

8 CHAIRMAN GRAYBILL: Mr. Berg. The journal may show
9 your presence and you may vote.

10 Mr. Davis.

11 DELEGATE DAVIS: Mr. President and fellow delegates.
12 I made the motion to reconsider and, first, I had made a
13 motion to reduce the age qualifications from thirty to twenty-
14 five. That made you eligible to run five years earlier for
15 these seven offices. I think this has been misquoted in the
16 press, whether intentionally or unintentionally, that young
17 people are deprived of the right to hold office. They can
18 hold the office of legislators, all the county offices, any
19 state office except these seven. To have some additional qual-
20 ifications for office besides being eighteen years old, would
21 not seem to be unreasonable to me. I have wondered what we
22 are writing in this, but I finally reviewed my notes last
23 night and discovered that we were writing poetry, as Mr.
24 Burkhardt said. So, I can see why it would be rather poetic
25 to have all the eighteen year olds eligible for office. I

1 attended the Girls State. I've attended Boys State. I've
2 attended the State Key Club Convention and none of the young
3 people in those even voted to lower the voting age to say
4 nothing about the age to the highest offices. I think there's
5 another significant question too talking about running this
6 government that you've given so much power to, the complete
7 power of taxation and these other things. If you have a team
8 concept that we now have in our constitution, you can have
9 an old man like myself with the teammate maybe, as the presi-
10 dent of one of the units of the university system, and it
11 would be very appealing to the voters. You'd have a great
12 team going. Then, if I got killed in a car wreck the next
13 day, I'm sure that everyone would have some misgivings about
14 whether enough experience, etc., that goes into this thing.
15 I think, by now, we should all be impressed -- I hope we are --
16 by how much experience could mean if we were fortunate enough
17 to have it, and we haven't acquired it ourselves, I'm sure.
18 So, I would oppose anything to suspend the rules further in
19 this convention. There have been very many close votes.
20 The thinking of this convention is quite novel. A week ago,
21 we voted seventy-one to sixteen on the floor of how many
22 people we were going to have in the body. Yesterday, we voted
23 seventy-seven to seventeen, so the stability of our thinking
24 and consistency has been not really anything to be admired.
25 It's almost like a unanimous dissent in the supreme court. I

1 oppose any motion to suspend the rules on this or anything
2 else.

3 CHAIRMAN GRAYBILL: Mr. Scanlin.

4 DELEGATE SCANLIN: Mr. Chairman. In defense of us
5 poets, I just want the record to be straight. We're only in-
6 terested in the book of sounds, otherwise known as the Bill
7 of Rights. We don't intend to put any poetry into the execu-
8 tive article. Thank you, Mr. Chairman.

9 CHAIRMAN GRAYBILL: Very well. The issue is on --
10 Mr. Kelleher.

11 DELEGATE KELLEHER: I think that my learned brother
12 teaming up with a teenager is as likely as Mrs. Chisholm
13 teaming up with Mr. Wallace. A recent suggestion has been
14 made for a national ticket. I think the serious and only
15 relevant matter as far as allowing the eighteen year olds to
16 run for governor -- There's only one question that's really
17 important. Do you have a quarter of a million dollars? That's
18 what it costs to run for governor in this state, and that's
19 the only relevant matter. The young people around here were
20 tremendously dissolutioned with this convention, after we
21 reversed ourselves. I strongly support Mr. Campbell's motion.

22 CHAIRMAN GRAYBILL: Mr. Monroe.

23 DELEGATE MONROE: Mr. President. Yesterday, I
24 spoke to a gentleman who supposedly represented about ninety-
25 one thousand people in the state of Montana. He said they

1 were rather concerned about many things that we had reconsider-
2 ed in our deliberations. This eighteen year old running for
3 governor happened to be one of them. So, I hope that we move
4 here to reconsider and go even further than that and allow
5 eighteen year olds to run for the office of governor, even
6 though we know in our own minds, no eighteen year old is going
7 to be able to win an election in the state of Montana.

8 CHAIRMAN GRAYBILL: Mr. Gysler.

9 DELEGATE GYSLER: Mr. Chairman. Last night when I
10 filled up with gas, a nineteen year old service station at-
11 tendant asked me -- he said, is it true that someone eight-
12 een or nineteen like I am can run for the legislature? I
13 said, yes. In no uncertain terms, he told me that he thought
14 that this body just wasn't too sharp to do something like
15 that. I oppose the motion to reconsider.

16 CHAIRMAN GRAYBILL: Mr. James.

17 DELEGATE JAMES: I suppose it just depends on who
18 you talk to or who writes to you. Now, I have a letter here.
19 Dear Mr. James: I support the right of all registered voters
20 to hold public office. Respectfully, John Elliott, President,
21 Youth CON CON. Evidently, this kid had more on the ball than
22 anyone Mr. Gysler talked to. (Laughter)

23 CHAIRMAN GRAYBILL: The Chair will recognize Mrs.
24 Bowman, Mr. Brown, and Mr. Choate who are now present and may
25 vote. The journal may so show their attendance.

1 Mr. Martin, do you wish to speak?

2 DELEGATE MARTIN: Mr. President. As a member of
3 the Executive Committee and one who advocated and urged that
4 the age barrier be dropped, I will just reaffirm the position
5 which I've taken on the floor and which I intend to keep.
6 That is that I will oppose any motion to reopen debate and
7 discussion once we've decided. I oppose the motion.

8 CHAIRMAN GRAYBILL: Mr. Campbell, if you want to
9 close, do so briefly please.

10 DELEGATE CAMPBELL: The argument that someone will
11 have an eighteen year old running mate is as unlikely, and
12 would be as politically popular, as Richard Nixon dropping
13 Spiro Agnew for Lou Rolls. As Katie Payne said, who's Lou
14 Rolls? To the young people, it means something, but, polit-
15 ically, it's just not going to happen. I would just like to
16 say that since this reversal we did make, and we have made
17 two decisions on it -- the first one favoring the young in
18 the executive report. The second decision was against them
19 and was, what I think, the low point of the convention. Now,
20 what I'm asking is an opportunity for us to make our final
21 decision. I would request a roll call vote.

22 CHAIRMAN GRAYBILL: Very well. We'll have a roll
23 call vote. It takes fifty-one votes or two-thirds, whichever
24 is less, to accomplish this. Those in favor of suspending the
25 rules, vote Aye. Those opposed, vote No. Has every delegate

1 voted? Does any delegate wish to change his vote? Very well.

2 Take the vote.

3	Aasheim	-	Nay	Cate	-	Aye
4	Anderson, J.	-	Nay	Champoux	-	Aye
5	Anderson, O.	-	Nay	Choate	-	Nay
6	Arbanas	-	Aye	Conover	-	Nay
7	Arness	-	Nay	Cross	-	Aye
8	Aronow	-	Nay	Dahood	-	Aye
9	Artz	-	Nay	Davis	-	Nay
10	Ask	-	Nay	Delaney	-	Nay
11	Babcock	-	Nay	Driscoll	-	Aye
12	Barnard	-	Nay	Drum	-	Nay
13	Bates	-	Nay	Eck	-	Aye
14	Belcher	-	Nay	Erdmann	-	Nay
15	Berg	-	Nay	Eskildsen	-	Abs
16	Berthelson	-	Nay	Etchart	-	Nay
17	Blaylock	-	Aye	Felt	-	Nay
18	Blend	-	Nay	Foster	-	Nay
19	Bowman	-	Aye	Furlong	-	Aye
20	Brazier	-	Nay	Garlington	-	Aye
21	Brown	-	Nay	Graybill	-	Nay
22	Bugbee	-	Aye	Gysler	-	Nay
23	Burkhardt	-	Aye	Habedank	-	Nay
24	Cain	-	Aye	Hanson, R. S.	-	Nay
25	Campbell	-	Aye	Hanson, R.	-	Nay

1	Harbaugh	-	Aye	Noble	-	Nay
2	Harlow	-	Aye	Nutting	-	Nay
3	Harper	-	Aye	Payne	-	Nay
4	Harrington	-	Aye	Pemberton	-	Nay
5	Heliker	-	Abs	Rebal	-	Nay
6	Holland	-	Abs	Reichert	-	Aye
7	Jacobsen	-	Nay	Robinson	-	Aye
8	James	-	Aye	Roeder	-	Abs
9	Johnson	-	Nay	Rollins	-	Aye
10	Joyce	-	Nay	Romney	-	Nay
11	Kamhoot	-	Nay	Rygg	-	Nay
12	Kelleher	-	Aye	Scanlin	-	Aye
13	Leuthold	-	Aye	Schiltz	-	Aye
14	Loendorf	-	Aye	Siderius	-	Aye
15	Lorello	-	Aye	Simon	-	Nay
16	Mahoney	-	Abs	Skari	-	Aye
17	Mansfield	-	Nay	Sparks	-	Aye
18	Martin	-	Nay	Speer	-	Aye
19	McCarvel	-	Nay	Studer	-	Nay
20	McDonough	-	Nay	Sullivan	-	Aye
21	McKeon	-	Aye	Swanberg	-	Nay
22	McNeil	-	Aye	Toole	-	Nay
23	Melvin	-	Nay	Van Buskirk	-	Aye
24	Monroe	-	Aye	Vermillion	-	Aye
25	Murray	-	Nay	Wagner	-	Nay

1 Ward - Aye Wilson - Nay
2 Warden - Nay Woodmansey - Nay

3 CLERK HANSON: Mr. Chairman, forty voting Aye,
4 fifty-five voting No.

5 CHAIRMAN GRAYBILL: Fifty-five having voted No,
6 and forty Aye, the motion to suspend the rules fails. Is
7 there other discussion of section three, sub one? If not,
8 you have heard Mr. Schiltz's motion that we adopt section
9 three, sub one. All in favor, say Aye.

10 DELEGATES: Aye.

11 CHAIRMAN GRAYBILL: Opposed, No.

12 (No response)

13 CHAIRMAN GRAYBILL: It's adopted. Mr. Schiltz,
14 sub two.

15 DELEGATE SCHILTZ: Mr. Chairman. I move that when
16 this committee does arise and report after having had under
17 consideration section three, sub two, of the Style and Draft-
18 ing Report Number Four, it recommend the same be adopted.
19 Mr. Chairman.

20 CHAIRMAN GRAYBILL: Mr. Schiltz.

21 DELEGATE SCHILTZ: Only style changes, which are
22 self-evident.

23 CHAIRMAN GRAYBILL: Discussion? All in favor of
24 sub two, say Aye.

25 DELEGATES: Aye.

1 CHAIRMAN GRAYBILL: Opposed.

2 (No response)

3 CHAIRMAN GRAYBILL: It's adopted. Sub three.

4 DELEGATE SCHILTZ: Mr. Chairman. I move that when
5 this committee does arise and report after having had under
6 consideration section three, sub three, of the Style and
7 Drafting Report Number Four, it recommend the same be adopted.
8 Mr. Chairman.

9 CHAIRMAN GRAYBILL: Mr. Schiltz.

10 DELEGATE SCHILTZ: Once again, style changes.

11 CHAIRMAN GRAYBILL: Any discussion of sub three?
12 All in favor of sub three, say Aye.

13 DELEGATES: Aye.

14 CHAIRMAN GRAYBILL: Opposed.

15 (No response)

16 CHAIRMAN GRAYBILL: It's adopted. Section four,
17 Mr. Schiltz.

18 DELEGATE SCHILTZ: Mr. Chairman. I move that when
19 this committee does arise and report after having had under
20 consideration section four, sub one, of the Style and Drafting
21 Report Number Four, it recommend the same be adopted. Mr.
22 Chairman.

23 CHAIRMAN GRAYBILL: Mr. Schiltz.

24 DELEGATE SCHILTZ: In this and the next section,
25 particularly this section, we've taken particular care to

1 define the powers and duties. We thought they were a little
2 fussy in the material that we got from the floor, and we
3 clearly delineated between the two. That's style and everything
4 is style.

5 CHAIRMAN GRAYBILL: Is there any question about
6 section four, sub one? If not, all in favor, say Aye.

7 DELEGATES: Aye.

8 CHAIRMAN GRAYBILL: Opposed, No.

9 (No response)

10 CHAIRMAN GRAYBILL: It's adopted. Sub two.

11 DELEGATE SCHILTZ: Mr. Chairman. I move that when
12 this committee does arise and report after having had under
13 consideration section four, sub two, of the Style and Drafting
14 Report Number Four, it recommend the same be adopted. Mr.
15 Chairman.

16 CHAIRMAN GRAYBILL: Mr. Schiltz.

17 DELEGATE SCHILTZ: Mr. Chairman. I made the comment
18 about clearly delineating between powers and duties in pro-
19 viding that powers cannot be delegated.

20 CHAIRMAN GRAYBILL: Any discussion? All in favor
21 of section four, sub two, say Aye.

22 DELEGATES: Aye.

23 CHAIRMAN GRAYBILL: Opposed.

24 (No response)

25 CHAIRMAN GRAYBILL: It's adopted. Sub three.

1 DELEGATE SCHILTZ: Mr. Chairman. I move that when
2 this committee does arise and report after having had under
3 consideration section four, sub three, of the Style and Draft-
4 ing Report Number Four, it recommend the same be adopted. Mr.
5 Chairman.

6 CHAIRMAN GRAYBILL: Mr. Schiltz.

7 DELEGATE SCHILTZ: These are only style changes. I
8 have one note here I want to look at though. If you'll look
9 at sub three, we provide that the secretary of state shall
10 maintain official records of the executive department, which
11 is transposed from the way we got it, because we didn't want
12 it to mean acts of the executive. We didn't think that was
13 what was intended.

14 CHAIRMAN GRAYBILL: Is there any discussion of
15 section four, sub three? If not, all in favor, say Aye.

16 DELEGATES: Aye.

17 CHAIRMAN GRAYBILL: Opposed.

18 (No response)

19 CHAIRMAN GRAYBILL: It's adopted. Sub four.

20 DELEGATE SCHILTZ: Mr. Chairman. I move that when
21 this committee does arise and report after having had under
22 consideration section four, sub four, of the Style and Draft-
23 ing Report Number Four, that it recommend the same be adopted.
24 Mr. Chairman.

25 CHAIRMAN GRAYBILL: Mr. Schiltz.

1 DELEGATE SCHILTZ: Just minor style changes.
2 CHAIRMAN GRAYBILL: Any discussion of sub four?
3 All in favor, say Aye.
4 DELEGATES: Aye.
5 CHAIRMAN GRAYBILL: Opposed.
6 (No response)
7 CHAIRMAN GRAYBILL: It's adopted. Sub five.
8 DELEGATE SCHILTZ: Mr. Chairman. I move that when
9 this committee does arise and report after having had under
10 consideration section four, sub five, of the Style and Draft-
11 ing Report Number Four, it recommend the same be adopted.
12 Mr. Chairman.
13 CHAIRMAN GRAYBILL: Mr. Schiltz.
14 DELEGATE SCHILTZ: We combined sub five with sub
15 six. This will probably be moved at some time to the legis-
16 lative article, when we prepare the final draft. This is
17 the legislative post audit.
18 CHAIRMAN GRAYBILL: Any discussion of sub five?
19 All in favor, say Aye.
20 DELEGATES: Aye.
21 CHAIRMAN GRAYBILL: Opposed.
22 (No response)
23 CHAIRMAN GRAYBILL: Sub five is adopted. Sub five
24 includes six, is that right?
25 DELEGATE SCHILTZ: It includes six and seven.

1 CHAIRMAN GRAYBILL: Everyone understands that?
2 That's the end of section four. Very well. It's adopted.

3 Mr. Habedank.

4 DELEGATE HABEDANK: I'm wondering if Style and
5 Drafting really intends to move all of sub five to the legis-
6 lative department. It seems to me what they've taken out of
7 six is the part that would be moved to the legislative article.

8 DELEGATE SCHILTZ: Mr. Chairman. We're not moving
9 it at this moment, so I don't think there's any need to debate
10 it until we do move it.

11 CHAIRMAN GRAYBILL: Mr. Davis.

12 DELEGATE DAVIS: Mr. President. When I spoke in
13 response to Mr. Campbell, I overlooked the appreciation of
14 Miss Rankin being here. I wonder if we could take time out
15 to give a rousing hand of applause to a great dedicated public
16 servant. I'm very sorry that I, in my debate, overlooked
17 that. Would that be proper, Mr. President?

18 CHAIRMAN GRAYBILL: I think it would. (Applause)
19 The convention should understand that Miss Rankin is going
20 to address us next week, so we'll see her again. All right.
21 Lest anyone be confused, subsection five of section four
22 which includes the old six and seven, or at least it has all
23 been compressed, has been adopted as far as the Chair under-
24 stands. We're ready to go on to section five.

25 DELEGATE SCHILTZ: Mr. Chairman. I move that when

1 this committee does arise and report after having had under
2 consideration section five, sub one, of the Style and Drafting
3 Report Number Four, it recommend the same be adopted. Mr.
4 Chairman.

5 CHAIRMAN GRAYBILL: Mr. Schiltz.

6 DELEGATE SCHILTZ: You'll see that we made no change
7 in this, but we did make a comment that this is a somewhat
8 bland statement. It does not prohibit increase or decrease
9 in salary at any time. We thought we should call that to
10 your attention in the comments. Otherwise, no change.

11 CHAIRMAN GRAYBILL: Were you talking about sub two?

12 DELEGATE SCHILTZ: I was talking about sub one.

13 CHAIRMAN GRAYBILL: All right. Section five, sub
14 one, no changes. All in favor, say Aye.

15 DELEGATES: Aye.

16 CHAIRMAN GRAYBILL: Opposed.

17 (No response)

18 CHAIRMAN GRAYBILL: It's adopted. Sub two.

19 DELEGATE SCHILTZ: Mr. Chairman. I move that when
20 this committee does arise and report after having had under
21 consideration section five, sub two, of the Style and Drafting
22 Report Number Four, it recommend the same be adopted. Mr.
23 Chairman.

24 CHAIRMAN GRAYBILL: Mr. Schiltz.

25 DELEGATE SCHILTZ: Only style changes -- nothing

1 significant to note.

2 CHAIRMAN GRAYBILL: Is there discussion on sub two --
3 section five, sub two, on page eleven? If not, all in favor,
4 say Aye.

5 DELEGATES: Aye.

6 CHAIRMAN GRAYBILL: Opposed.

7 (No response)

8 CHAIRMAN GRAYBILL: It's adopted. Section six.

9 DELEGATE SCHILTZ: Mr. Chairman. I move that when
10 this committee does arise and report after having had under
11 consideration section six, sub one, of the Style and Drafting
12 Report Number Four, it recommend the same be adopted. Mr.
13 Chairman.

14 CHAIRMAN GRAYBILL: Mr. Schiltz.

15 DELEGATE SCHILTZ: Mr. Chairman. We only changed
16 style in some minor places. There's nothing significant to
17 note.

18 CHAIRMAN GRAYBILL: Any discussion of section six?
19 All in favor of section six, say Aye.

20 DELEGATES: Aye.

21 CHAIRMAN GRAYBILL: Opposed.

22 (No response)

23 CHAIRMAN GRAYBILL: It's adopted. Section six,
24 sub two.

25 DELEGATE SCHILTZ: Mr. Chairman. I move that when

1 this committee does arise and report after having had under
2 consideration section six, sub two, of the Style and Drafting
3 Report Number Four, it recommend the same be adopted. Mr.
4 Chairman.

5 CHAIRMAN GRAYBILL: Mr. Schiltz.

6 DELEGATE SCHILTZ: Just minor style changes only.

7 CHAIRMAN GRAYBILL: All in favor of section six,
8 sub two, say Aye.

9 DELEGATES: Aye.

10 CHAIRMAN GRAYBILL: Opposed.

11 (No response)

12 CHAIRMAN GRAYBILL: It's adopted. Section seven.

13 DELEGATE SCHILTZ: Mr. Chairman. I move that when
14 this committee does arise and report after having had under
15 consideration section seven of the Style and Drafting Report
16 Number Four, it recommend the same be adopted. Mr. Chairman.

17 CHAIRMAN GRAYBILL: Mr. Schiltz.

18 DELEGATE SCHILTZ: Mr. Chairman. We made only
19 style changes. We deleted the language on lines twenty-two,
20 twenty-three and twenty-four as something that has already
21 been done. This section was apparently taken from the execu-
22 tive reorganization act.

23 CHAIRMAN GRAYBILL: Is there any discussion of
24 section seven? All in favor of six and seven, say Aye.

25 DELEGATES: Aye.

1 CHAIRMAN GRAYBILL: Opposed.

2 (No response)

3 CHAIRMAN GRAYBILL: It's adopted. Section eight.

4 DELEGATE SCHILTZ: Mr. Chairman. I move that when
5 this committee does arise and report after having had under
6 consideration section eight, sub one, of the Style and Draft-
7 ing Report Number Four, it recommend the same be adopted. Mr.
8 Chairman.

9 CHAIRMAN GRAYBILL: Mr. Schiltz.

10 DELEGATE SCHILTZ: These are minor style changes.

11 CHAIRMAN GRAYBILL: Any discussion of section eight?
12 All in favor, say Aye.

13 DELEGATES: Aye.

14 CHAIRMAN GRAYBILL: Opposed.

15 (No response)

16 CHAIRMAN GRAYBILL: Section eight is adopted.
17 Section eight, two.

18 DELEGATE SCHILTZ: Mr. Chairman. I move that when
19 this committee does arise and report after having had under
20 consideration section eight, sub two, of the Style and Draft-
21 ing Report Number Four, it recommend the same be adopted.
22 Mr. Chairman.

23 CHAIRMAN GRAYBILL: Mr. Schiltz.

24 DELEGATE SCHILTZ: This, again, is minor style
25 changes.

1 CHAIRMAN GRAYBILL: Any discussion of eight, sub
2 two? All in favor, say Aye.
3 DELEGATES: Aye.
4 CHAIRMAN GRAYBILL: Opposed.
5 (No response)
6 CHAIRMAN GRAYBILL: It's adopted. Eight, sub three.
7 DELEGATE SCHILTZ: Mr. Chairman. I move that when
8 this committee does arise and report after having had under
9 consideration section eight, sub three, of the Style and
10 Drafting Report Number Four, it recommend the same be adopted.
11 Mr. Chairman.
12 CHAIRMAN GRAYBILL: Mr. Schiltz.
13 DELEGATE SCHILTZ: Mr. Chairman. You'll note that
14 we took out the words, during a recess of the legislature,
15 and inserted in lieu thereof, is not in session. We did that
16 again in sub four for the reason that during a recess, it
17 has no real meaning and could be confusing. We thought that
18 the intent was when the legislature is not in session. Other-
19 wise, everything style.
20 CHAIRMAN GRAYBILL: Any discussion of sub three?
21 All in favor, say Aye.
22 DELEGATES: Aye.
23 CHAIRMAN GRAYBILL: Opposed.
24 (No response)
25 CHAIRMAN GRAYBILL: It's adopted. Sub four.

1 DELEGATE SCHILTZ: Mr. Chairman. I move that when
2 this committee does arise and report after having had under
3 consideration section eight, sub four, of the Style and Draft-
4 ing Report Number Four, it recommend the same be adopted. Mr.
5 Chairman.

6 CHAIRMAN GRAYBILL: Mr. Schiltz.

7 DELEGATE SCHILTZ: Mr. Chairman. Except as noted,
8 where we took out, during recess, again, only style changes.

9 CHAIRMAN GRAYBILL: Any discussion of sub four?
10 All in favor, say Aye.

11 DELEGATES: Aye.

12 CHAIRMAN GRAYBILL: Opposed.

13 (No response)

14 CHAIRMAN GRAYBILL: It's adopted. Section nine.

15 DELEGATE SCHILTZ: Mr. Chairman. I move that when
16 this committee does arise and report after having had under
17 consideration section nine of the Style and Drafting Report
18 Number Four, it recommend the same be adopted. Mr. Chairman.

19 CHAIRMAN GRAYBILL: Mr. Schiltz.

20 DELEGATE SCHILTZ: We made no changes here.

21 CHAIRMAN GRAYBILL: Section nine. All in favor,
22 say Aye.

23 DELEGATES: Aye.

24 CHAIRMAN GRAYBILL: Opposed.

25 (No response)

1 CHAIRMAN GRAYBILL: It's adopted. Section ten, sub
2 one.

3 DELEGATE SCHILTZ: Mr. Chairman. I move that when
4 this committee does arise and report after having had under
5 consideration section ten, sub one, of the Style and Drafting
6 Report Number Four, it recommend the same be adopted. Mr.
7 Chairman.

8 CHAIRMAN GRAYBILL: Mr. Schiltz.

9 DELEGATE SCHILTZ: Mr. Chairman. I have some notes
10 I want to look at first. The material that we got from the
11 floor made it possible to read this section -- subsection --
12 that a bill could become law if the governor did not sign
13 and did not veto. That, of course, is not the intent. So,
14 we put in language to cure that possibility which is surely
15 only a style change.

16 CHAIRMAN GRAYBILL: Is there any question about
17 that? Any discussion of ten, sub one? All in favor of ten,
18 sub one, say Aye.

19 DELEGATES: Aye.

20 CHAIRMAN GRAYBILL: Mrs. Bates, do you want to
21 discuss that?

22 DELEGATE BATES: I don't know, but I didn't have
23 time to let this sink in. It seems to me that that's in-
24 accurate. Let's bypass it first.

25 CHAIRMAN GRAYBILL: We won't bypass it unless we

1 move to. Mr. Schiltz, could you explain that again?

2 DELEGATE SCHILTZ: Yes. I'll have to read it. I
3 did this late last night. Let's see -- it shall be submitted
4 to the governor for his signature and shall become (I'm
5 reading on line five of page fourteen. This is the way we
6 got it from the floor.) law if he does not sign -- as it read --
7 if he neither approves nor vetoes the bill within five days.
8 Then it goes on, it shall become law. We didn't think that
9 anybody meant that so we had it read as it reads now, that
10 it is sent to the governor for his signature. If he does
11 not sign or veto the bill within five days after its delivery
12 to him, if the legislature is in session, or within twenty
13 days if the legislature is adjourned, then it shall become
14 law. I don't think there's any question about the clarity
15 of it now, but we thought there was some question about the
16 clarity then.

17 CHAIRMAN GRAYBILL: I don't think it changes the
18 sense of it, Mrs. Bates. It just makes it clear. Let's put
19 the question again. Is there any further discussion on ten,
20 sub one? If not, all in favor of ten, sub one, say Aye.

21 DELEGATES: Aye.

22 CHAIRMAN GRAYBILL: Opposed, No.

23 (No response)

24 CHAIRMAN GRAYBILL: It's adopted. Ten, sub two.

25 DELEGATE SCHILTZ: Mr. Chairman. I move that when

1 this committee does arise and report after having had under
2 consideration section ten, sub two, of the Style and Drafting
3 Report Number Four, it recommend the same be adopted. Mr.
4 Chairman.

5 CHAIRMAN GRAYBILL: Mr. Schiltz.

6 DELEGATE SCHILTZ: No changes here that need to be
7 noted, purely style.

8 CHAIRMAN GRAYBILL: Ten, sub two. All in favor,
9 say Aye.

10 DELEGATES: Aye.

11 CHAIRMAN GRAYBILL: Opposed.

12 (No response)

13 CHAIRMAN GRAYBILL: It's adopted. Three -- sub three.

14 DELEGATE SCHILTZ: Mr. Chairman. I move that when
15 this committee does arise and report after having had under
16 consideration section ten, sub three, of the Style and Draft-
17 ing Report Number Four, it recommend the same be adopted. Mr.
18 Chairman.

19 CHAIRMAN GRAYBILL: Mr. Schiltz.

20 DELEGATE SCHILTZ: Mr. Chairman, these are only
21 style changes.

22 CHAIRMAN GRAYBILL: Mrs. Eck.

23 DELEGATE ECK: They have the same problem here about
24 present and voting. Would this apply here also?

25 DELEGATE SCHILTZ: I couldn't hear, Mrs. Eck.

1 DELEGATE ECK: We have two-thirds of the members
2 present. We discussed this yesterday and decided that it would
3 be preferable to have present and voting.

4 DELEGATE SCHILTZ: That's substantive so far as I'm
5 concerned.

6 CHAIRMAN GRAYBILL: We held yesterday, Mr. Schiltz,
7 that making it present and voting was not substantive and was
8 stylistic to make it clear what you meant.

9 DELEGATE SCHILTZ: I should say then that we didn't
10 wish to take it upon ourselves to add it.

11 DELEGATE ECK: Mr. Chairman.

12 CHAIRMAN GRAYBILL: Yes.

13 DELEGATE ECK: I move that we add, and voting after
14 present.

15 CHAIRMAN GRAYBILL: This is sub three on line twenty-
16 one on page fourteen. Mrs. Eck has made a motion to add the
17 words, and voting, after the word present so that it's the
18 same as we did yesterday on the legislative article. Is
19 there discussion? All in favor of adding the words, and vot-
20 ing, after the word present in line twenty-one, please say Aye.

21 DELEGATES: Aye.

22 CHAIRMAN GRAYBILL: Opposed.

23 (No response)

24 CHAIRMAN GRAYBILL: That amendment is made. Is
25 there other discussion of sub three? Very well. All in favor

1 of sub three as amended, say Aye.

2 DELEGATES: Aye.

3 CHAIRMAN GRAYBILL: Opposed.

4 (No response)

5 CHAIRMAN GRAYBILL: It's adopted as amended. Now,
6 sub four.

7 DELEGATE SCHILTZ: Mr. Chairman. I move that when
8 this committee does arise and report after having had under
9 consideration section ten, sub four, of the Style and Drafting
10 Report Number Four, it recommend the same be adopted. Mr.
11 Chairman.

12 CHAIRMAN GRAYBILL: Mr. Schiltz.

13 DELEGATE SCHILTZ: Only style changes.

14 CHAIRMAN GRAYBILL: Any discussion? All in favor
15 of sub four, say Aye.

16 DELEGATES: Aye.

17 CHAIRMAN GRAYBILL: Opposed.

18 (No response)

19 CHAIRMAN GRAYBILL: It's adopted. Sub five.

20 DELEGATE SCHILTZ: Mr. Chairman. I move that when
21 this committee does arise and report after having had under
22 consideration section ten, sub five, of the Style and Drafting
23 Report Number Four, it recommend the same be adopted. Mr.
24 Chairman.

25 CHAIRMAN GRAYBILL: Mr. Schiltz.

1 DELEGATE SCHILTZ: I would only note that the com-
2 mittee is divided on whether or not this belongs in the legis-
3 lative article or the executive article. That will probably
4 be resolved when we prepare the final draft. Otherwise, no
5 change.

6 CHAIRMAN GRAYBILL: All those in favor of sub five,
7 say Aye.

8 DELEGATES: Aye.

9 CHAIRMAN GRAYBILL: Opposed.

10 (No response)

11 CHAIRMAN GRAYBILL: It's adopted. Now, section
12 eleven.

13 DELEGATE SCHILTZ: Mr. Chairman. I should note at
14 this point, because it isn't noted anywhere else, that we
15 entirely deleted section eleven on page fifteen as it came
16 from the floor. The reason was that it is provided for in
17 section six of the legislative article.

18 CHAIRMAN GRAYBILL: All right. Does everyone under-
19 stand that section eleven has been entirely deleted here
20 because in the legislative article, we put in a section provid-
21 ing for calling special sessions, which said the same thing
22 in substance, is that right?

23 DELEGATE SCHILTZ: That's our position.

24 CHAIRMAN GRAYBILL: Mr. Joyce.

25 DELEGATE JOYCE: Mr. Chairman. It seems to me that,

1 as the section eleven passed the Committee of the Whole, that
2 the first sentence or the first clause that we had in section
3 eleven, which appeared on page twenty-nine of the executive
4 report was retained, where it said that whenever the governor
5 considers it in the public interest, he may convene the legis-
6 lature, either house or the two houses in joint session period.
7 It seems to me that that should be retained in the executive
8 article even though it is duplicated in the legislative article.
9 For the purposes of clarity, anybody reading the constitution
10 can see that the governor does have the power to call special
11 sessions. I therefore move that the sentence as it passed the
12 Committee of the Whole be reinstated in section eleven of the
13 executive article.

14 CHAIRMAN GRAYBILL: Mr. Joyce, what number is that
15 in your report? We're on section eleven.

16 DELEGATE JOYCE: Page twenty-nine of the majority
17 report, which was identical to the minority report of the
18 executive article.

19 CHAIRMAN GRAYBILL: Very well. Mr. Joyce has made
20 a motion that we retain the first sentence of section eleven
21 which says, whenever the governor considers it in the public
22 interest, he may convene the legislature. That's lines two
23 and three on page fifteen of the report we're working from.
24 He feels that even though it's repetitious, it should be set
25 forth in the executive article. Is there further discussion?

1 Mr. Furlong.

2 DELEGATE FURLONG: Mr. Chairman. I wonder if Mr.
3 Joyce would consider suggesting to Style and Drafting that they
4 put that portion pertaining to the governor in the executive
5 article, and the other portion pertaining to the legislature
6 in the legislative article.

7 DELEGATE JOYCE: That would be fine with me. Mr.
8 Chairman, I take it that he asked me a question.

9 CHAIRMAN GRAYBILL: I'm checking what we did. We
10 did leave that sentence in. We took out the middle sentence.
11 We left it as the stricken part shows. Is there further dis-
12 cussion of that matter? Does anyone happen to know, offhand,
13 the number of the --

14 DELEGATES: Sixteen.

15 CHAIRMAN GRAYBILL: Page sixteen of the legislative
16 article.

17 DELEGATE SCHILTZ: Mr. Graybill?

18 CHAIRMAN GRAYBILL: Yes, sir.

19 DELEGATE SCHILTZ: Page eleven of the unicameral
20 section and it's on page eleven starting at line fifteen.

21 CHAIRMAN GRAYBILL: Of the unicameral article?

22 DELEGATE SCHILTZ: Right. It says in haec verba,
23 the legislature may be convened in special sessions by the
24 governor. In haec verba, how do you like that one?

25 CHAIRMAN GRAYBILL: Yes, the legislative article says

1 that the legislature may be convened in special sessions by the
2 governor, or at the written request of a majority of the mem-
3 bers. This one says, whenever the governor considers it in
4 the public interest, he may convene the legislature. Mr.
5 Joyce's motion is to retain in the executive article, the
6 first sentence about the governor. Is there further discussion?

7 Mr. Schiltz.

8 DELEGATE SCHILTZ: I would only have a problem in
9 that the two provisions aren't exactly parallel. So, we might
10 look up one and rely on it, and never get around to looking
11 up the other one. I think, stylistically, there should only
12 be one mention of this. In one case, it requires the public
13 interest. In the other case, the governor can do it willy-nilly.
14 I don't like it just from a style standpoint, but I don't re-
15 sist it awfully hard.

16 CHAIRMAN GRAYBILL: Mr. Joyce.

17 DELEGATE JOYCE: I hate to quibble over the thing.
18 It just seems to me if in the final styling, if there is a
19 section eleven that says the legislature may be convened in
20 special session by the governor period, why that would be
21 fine with me. It just seems to me that it is one of the powers
22 of the governor and it should appear in the executive article.

23 CHAIRMAN GRAYBILL: Mr. Aasheim.

24 DELEGATE AASHEIM: I concur with Mr. Joyce for two
25 reasons. It belongs there because it's an executive power, and

1 secondly, I think it spells out who is going to call the legis-
2 lature into session, if the majority of the legislature re-
3 quests it. In the legislative article, it just says the major-
4 ity of the members may call. It doesn't say who is going to
5 implement the call. I would move that we retain section eleven
6 in the executive article, if that motion hasn't already been
7 made.

8 CHAIRMAN GRAYBILL: Mr. Joyce only made a motion to
9 retain the first sentence. Do you want to make a motion to
10 retain the whole thing?

11 DELEGATE AASHEIM: As a substitute motion, I do.

12 CHAIRMAN GRAYBILL: Mr. Aasheim's substitute motion
13 is to retain all of section eleven as shown on lines two to
14 six, page fifteen. Is there any discussion? Mr. Joyce, are
15 you up?

16 DELEGATE JOYCE: Yes. Mr. Chairman, maybe I'm
17 wrong but my notes indicate that the second sentence was de-
18 leted in the Committee of the Whole.

19 CHAIRMAN GRAYBILL: That's wrong. The middle sent-
20 ence was deleted and it's not in the book here, but the last
21 sentence was retained and that's lines four to six.

22 Mr. Schiltz.

23 DELEGATE SCHILTZ: When I indicated that I didn't re-
24 sist Mr. Joyce's motion too much, but I do resist the sub-
25 stitute motion because now we're putting into the executive

1 article, material that is entirely legislative and doesn't
2 belong there.

3 CHAIRMAN GRAYBILL: All right. The issue is on Mr.
4 Aasheim's motion to retain all of section eleven. All in
5 favor of that, say Aye.

6 DELEGATES: Aye.

7 CHAIRMAN GRAYBILL: Opposed, No.

8 DELEGATES: No.

9 CHAIRMAN GRAYBILL: That's defeated. Now the issue
10 is on Mr. Joyce's motion to retain the first sentence of sec-
11 tion eleven about the governor calling -- convening -- the
12 legislature. All in favor of that motion, say Aye.

13 DELEGATES: Aye.

14 CHAIRMAN GRAYBILL: Opposed, No.

15 (No response)

16 CHAIRMAN GRAYBILL: That motion passes. So, we've
17 adopted that and, Mr. Schiltz, let's now put the question on
18 the first two sentences of section eleven.

19 DELEGATE SCHILTZ: At the same time, I want to re-
20 number -- we'll have to renumber as we go along.

21 CHAIRMAN GRAYBILL: Right.

22 DELEGATE SCHILTZ: Mr. Chairman. I move that when
23 this committee does arise and report after having had under
24 consideration section ten, sub eleven, it recommend the same
25 be adopted as amended. Wait a minute, it's section eleven, I'm

1 sorry.

2 CHAIRMAN GRAYBILL: All in favor of adopting section
3 eleven, as Mr. Joyce amended it and as the chairman has moved,
4 please say Aye.

5 DELEGATES: Aye.

6 CHAIRMAN GRAYBILL: Opposed.

7 (No response)

8 CHAIRMAN GRAYBILL: It's adopted as amended. Now,
9 we'll go on to section twelve.

10 DELEGATE SCHILTZ: Mr. Chairman. I move that when
11 this committee does arise and report after having had under
12 consideration section twelve of the Style and Drafting Report
13 Number Four, it recommend the same be adopted. Mr. Chairman.

14 CHAIRMAN GRAYBILL: Mr. Schiltz.

15 DELEGATE SCHILTZ: Mr. Chairman. We made some style
16 changes that are not significant. We changed the word, rein-
17 state, to restore to coincide with section 944720 of the
18 Revised Codes. Reinstate is not a word used in the Codes.

19 CHAIRMAN GRAYBILL: Members of the body, we're
20 talking about lines seven to ten on page fifteen. It used to
21 be twelve and then it was eleven and now it's back to twelve.
22 If you'd renumber pardons as twelve, and malitia as thirteen,
23 and successions fourteen in your books, we'll refer to them
24 that way since that's the way Style and Drafting will now want
25 them. Is there discussion of section twelve, pardons?

1 All in favor of that section, say Aye.

2 DELEGATES: Aye.

3 CHAIRMAN GRAYBILL: Opposed.

4 (No response)

5 CHAIRMAN GRAYBILL: It's adopted. Section thirteen,
6 malitia.

7 DELEGATE SCHILTZ: Mr. Chairman. I move that when
8 this committee does arise and report after having had under
9 consideration section thirteen, sub one, of the Style and
10 Drafting Report Number Four, it recommend the same be adopted.
11 Mr. Chairman.

12 CHAIRMAN GRAYBILL: Mr. Schiltz.

13 DELEGATE SCHILTZ: Only style changes here.

14 CHAIRMAN GRAYBILL: All in favor of thirteen, sub
15 one, say Aye.

16 DELEGATES: Aye.

17 CHAIRMAN GRAYBILL: Opposed.

18 (No response)

19 CHAIRMAN GRAYBILL: It's adopted. Thirteen, sub
20 two.

21 DELEGATE SCHILTZ: Mr. Chairman. I move that when
22 this committee does arise and report after having had under
23 consideration section thirteen, sub two, of the Style and Draft-
24 ing Report Number Four, it recommend the same be adopted. Mr.
25 Chairman.

1 CHAIRMAN GRAYBILL: Mr. Schiltz.

2 DELEGATE SCHILTZ: Only minor changes in style.

3 CHAIRMAN GRAYBILL: All in favor of thirteen, sub
4 two, say Aye.

5 DELEGATES: Aye.

6 CHAIRMAN GRAYBILL: Opposed.

7 (No response)

8 CHAIRMAN GRAYBILL: It's adopted. Now, section
9 fourteen, succession, sub one.

10 DELEGATE SCHILTZ: Mr. Chairman. I move that when
11 this committee does arise and report after having had under
12 consideration section fourteen, sub one, of the Style and
13 Drafting Report Number Four, it recommend the same be adopted.
14 Mr. Chairman.

15 CHAIRMAN GRAYBILL: Mr. Schiltz.

16 DELEGATE SCHILTZ: Mr. Chairman, we only made two
17 minor style changes.

18 CHAIRMAN GRAYBILL: Any discussion of fourteen, sub
19 one? All in favor, say Aye.

20 DELEGATES: Aye.

21 CHAIRMAN GRAYBILL: Opposed.

22 (No response)

23 CHAIRMAN GRAYBILL: It's adopted. Fourteen, sub two.

24 DELEGATE SCHILTZ: Mr. Chairman. I move that when
25 this committee does arise and report after having had under

1 consideration section fourteen, sub two, of the Style and Draft-
2 ing Report Number Four, it recommend the same be adopted. Mr.
3 Chairman.

4 CHAIRMAN GRAYBILL: Mr. Schiltz.

5 DELEGATE SCHILTZ: Mr. Chairman. If you'll look on
6 page sixteen at the top, we read the material as it came from
7 the floor, that there was the possibility that the lieutenant
8 governor could be acting governor during the forty-five days
9 absence instead of becoming acting governor after forty-five
10 days had elapsed. So, we changed it so that it was clear
11 that after the governor had been absent from the state. Other-
12 wise, just style changes.

13 CHAIRMAN GRAYBILL: Is there any discussion of section
14 fourteen, sub two?

15 Mrs. Payne

16 DELEGATE PAYNE: Mr. Chairman. May I ask Mr. Schiltz
17 a question?

18 DELEGATE SCHILTZ: Yes, indeed.

19 DELEGATE PAYNE: Does the Style and Drafting mean
20 absent from the state, bodily from the state, or do you mean
21 absent from the office of governor?

22 DELEGATE SCHILTZ: The material we got from the
23 floor said absence from the state.

24 DELEGATE PAYNE: Mr. President, may I ask another
25 question?

1 CHAIRMAN GRAYBILL: Yes, Mrs. Payne.

2 DELEGATE PAYNE: Well, could he be absent from his
3 office for forty-five days?

4 DELEGATE SCHILTZ: Not the way we got it. As it
5 read, he shall serve as acting governor during the absence
6 from the state of the governor for any period in excess of
7 forty-five consecutive days. There's a next section that
8 covers that sort of thing.

9 CHAIRMAN GRAYBILL: The next sections do cover the
10 situation of disability, Mrs. Payne, and might answer your
11 question. Is there any further question about section four-
12 teen, sub two? All in favor of it, say Aye.

13 DELEGATES: Aye.

14 CHAIRMAN GRAYBILL: Opposed.

15 (No response)

16 CHAIRMAN GRAYBILL: It's adopted. Sub three.

17 DELEGATE SCHILTZ: Mr. Chairman. I move that when
18 this committee does arise and report after having had under
19 consideration section fourteen, sub three, of the Style and
20 Drafting Report Number Four, it recommend the same be adopted.
21 Mr. Chairman.

22 CHAIRMAN GRAYBILL: Mr. Schiltz.

23 DELEGATE SCHILTZ: Mr. Chairman, relatively minor
24 style changes.

25 CHAIRMAN GRAYBILL: Is there any discussion of section

1 fourteen, sub three? Very well. All in favor, say Aye.

2 DELEGATES: Aye.

3 CHAIRMAN GRAYBILL: Opposed.

4 (No response)

5 CHAIRMAN GRAYBILL: It's adopted. Sub four.

6 DELEGATE SCHILTZ: Mr. Chairman. I move that when
7 this committee does arise and report after having had under
8 consideration section fourteen, sub four, of the Style and
9 Drafting Report Number Four, it recommend the same be adopted.
10 Mr. Chairman.

11 CHAIRMAN GRAYBILL: Mr. Schiltz.

12 DELEGATE SCHILTZ: Mr. Chairman, only style changes.

13 CHAIRMAN GRAYBILL: Any question about fourteen, sub
14 four? All in favor, say Aye.

15 DELEGATES: Aye.

16 CHAIRMAN GRAYBILL: Opposed.

17 (No response)

18 CHAIRMAN GRAYBILL: It's adopted. Section fourteen,
19 sub five.

20 DELEGATE SCHILTZ: Mr. Chairman. I move that when
21 this committee does arise and report after having had under
22 consideration section fourteen, sub five, of the Style and
23 Drafting Report Number Four, it recommend the same be adopted.
24 Mr. Chairman.

25 CHAIRMAN GRAYBILL: Mr. Schiltz.

1 DELEGATE SCHILTZ: Mr. Chairman. Only style changes
2 here.

3 CHAIRMAN GRAYBILL: Mrs. Eck.

4 DELEGATE ECK: We have the same problem there, mem-
5 bers present. I move that we add, and voting, after present.

6 CHAIRMAN GRAYBILL: On what line?

7 DELEGATE ECK: On line nineteen.

8 CHAIRMAN GRAYBILL: On line nineteen, Mrs. Eck moves
9 we add, after the words members present, the words, and vot-
10 ing. All in favor, say Aye.

11 DELEGATES: Aye.

12 CHAIRMAN GRAYBILL: Opposed.

13 (No response)

14 CHAIRMAN GRAYBILL: Very well.

15 DELEGATE SCHILTZ: Mr. Chairman.

16 CHAIRMAN GRAYBILL: Mr. Schiltz.

17 DELEGATE SCHILTZ: I move that when this committee
18 does arise and report after having had under consideration
19 section fourteen, sub five, of the Style and Drafting Report
20 Number Four, it recommend the same be adopted as amended.

21 CHAIRMAN GRAYBILL: All in favor of adopting it
22 as amended, say Aye.

23 DELEGATES: Aye.

24 CHAIRMAN GRAYBILL: Opposed.

25 (No response)

1 CHAIRMAN GRAYBILL: It's adopted. Section six.

2 DELEGATE SCHILTZ: Mr. Chairman. I move that when
3 this committee does arise and report after having had under
4 consideration section fourteen, sub six, of the Style and
5 Drafting Report Number Four, it recommend the same be adopted.
6 Mr. Chairman.

7 CHAIRMAN GRAYBILL: Mr. Schiltz.

8 DELEGATE SCHILTZ: Mr. Chairman, a very minor change.
9 Instead of herein, we put in, in this constitution.

10 CHAIRMAN GRAYBILL: All in favor of section fourteen,
11 sub six, say Aye.

12 DELEGATES: Aye.

13 CHAIRMAN GRAYBILL: Opposed.

14 (No response)

15 CHAIRMAN GRAYBILL: It's adopted. Sub seven.

16 DELEGATE SCHILTZ: Mr. Chairman. I move that when
17 this committee does arise and report after having had under
18 consideration section fourteen, sub seven, of the Style and
19 Drafting Report Number Four, it recommend the same be adopted.
20 Mr. Chairman.

21 CHAIRMAN GRAYBILL: Mr. Schiltz.

22 DELEGATE SCHILTZ: Mr. Chairman, very minor style
23 changes.

24 CHAIRMAN GRAYBILL: All in favor of sub seven, say
25 Aye.

1 DELEGATES: Aye.

2 CHAIRMAN GRAYBILL: Opposed.

3 (No response)

4 CHAIRMAN GRAYBILL: It's adopted. Sub eight.

5 DELEGATE SCHILTZ: Mr. Chairman. I move that when
6 this committee does arise and report after having had under
7 consideration section fourteen, sub eight, of the Style and
8 Drafting Report Number Four, it recommend the same be adopted.
9 Mr. Chairman.

10 CHAIRMAN GRAYBILL: Mr. Schiltz.

11 DELEGATE SCHILTZ: Mr. Chairman, in this case, we
12 struck out all that business about the title, powers and
13 duties of that office and just said, shall be the governor.
14 In other words, he's either the governor or he isn't. We
15 styled it that way.

16 CHAIRMAN GRAYBILL: All in favor of section fourteen,
17 sub eight, say Aye.

18 DELEGATES: Aye.

19 CHAIRMAN GRAYBILL: Opposed.

20 (No response)

21 CHAIRMAN GRAYBILL: It's adopted. Now, renumber the
22 next section fifteen on information for governor.

23 Mr. Schiltz.

24 DELEGATE SCHILTZ: Mr. Chairman. I move that when
25 this committee does arise and report after having had under

1 consideration section fifteen, sub one, of the Style and Draft-
2 ing Report Number Four, it recommend the same be adopted.

3 Mr. Chairman.

4 CHAIRMAN GRAYBILL: Mr. Schiltz.

5 DELEGATE SCHILTZ: Mr. Chairman, we made some style
6 changes which don't need to be noted particularly, and added
7 a title which wasn't in there, information for governor.

8 CHAIRMAN GRAYBILL: Is there any discussion of
9 section fifteen, information for governor? All in favor of
10 fifteen, sub one, say Aye.

11 DELEGATES: Aye

12 CHAIRMAN GRAYBILL: Opposed.

13 (No response)

14 CHAIRMAN GRAYBILL: It's adopted. Sub two.

15 DELEGATE SCHILTZ: Mr. Chairman. I move that when
16 this committee does arise and report after having had under
17 consideration section fifteen, sub two, of the Style and Draft-
18 ing Report Number Four, it recommend the same be adopted. Mr.
19 Chairman.

20 CHAIRMAN GRAYBILL: Mr. Schiltz.

21 DELEGATE SCHILTZ: Mr. Chairman, we made only style
22 changes; nothing else significant.

23 CHAIRMAN GRAYBILL: Any discussion? All in favor
24 of fifteen, sub two, say Aye.

25 DELEGATES: Aye.

1 CHAIRMAN GRAYBILL: Opposed.

2 (No response)

3 CHAIRMAN GRAYBILL: It's adopted. Fifteen, sub
4 three.

5 DELEGATE SCHILTZ: Mr. Chairman. I move that when
6 this committee does arise and report after having had under
7 consideration section fifteen, sub three, of the Style and
8 Drafting Report Number Four, it recommend the same be adopted.
9 Mr. Chairman.

10 CHAIRMAN GRAYBILL: Mr. Schiltz.

11 DELEGATE SCHILTZ: Mr. Chairman, only minor style
12 changes.

13 CHAIRMAN GRAYBILL: Is there discussion? All in
14 favor of fifteen, sub three, say Aye.

15 DELEGATES: Aye.

16 CHAIRMAN GRAYBILL: Opposed.

17 (No response)

18 CHAIRMAN GRAYBILL: It's adopted.

19 Mr. Murray. Mr. Roeder.

20 DELEGATE ROEDER: Before we finally dispose of this,
21 I'd like to suspend the rules and reconsider the executive
22 article.

23 CHAIRMAN GRAYBILL: Mr. Roeder, under Rule Seventy-
24 four, I need you to write that down and tell your reason. You
25 may state it and then write it down, but I do need it sent to

1 the Chair.

2 DELEGATE ROEDER: Sir, my reasons would be this.

3 If I were to be vouchsafed such a thing, I would then seek to
4 remove the office of treasurer from the constitution In accord-
5 ance with the recommendations of the legislative council,
6 Report Number Twenty-five, October, 1968, in which they say,
7 at a minimum, underlined, the constitutional status of state
8 treasurer should be eliminated.

9 CHAIRMAN GRAYBILL: Very well. Is there further
10 discussion?

11 Mrs. Bates.

12 DELEGATE BATES: Mr. Chairman. Before we completely
13 vote on this article, there's something that disturbs me here
14 a little bit. In going over this, in section fourteen on
15 succession, we've added the words --

16 CHAIRMAN GRAYBILL: Mrs. Bates, I'll get back to
17 you. We have a motion before the house to suspend the rules
18 to consider the executive article again.

19 DELEGATE BATES: Okay.

20 CHAIRMAN GRAYBILL: Is there debate on the motion to
21 suspend the rules? The issue is on Mr. Roeder's motion to
22 suspend the rules to reconsider the state treasurer's office.
23 It takes fifty-one votes or two-thirds. We'll use the voting
24 machines but not for a recorded vote. As many as are in favor
25 of suspending the rules, please vote Aye. Have all the dele-

1 gates voted? Does any delegate wish to change his vote? The
2 ballot is fifty-four and twenty-nine against. If some math-
3 ematician will tell me, I think that's two-thirds. That's
4 not two-thirds? All right, that's not two-thirds. Fifty/
5 seventy-ninths is not two-thirds.

6 Mr. Felt.

7 DELEGATE FELT: I have changed my vote from No to
8 Aye.

9 CHAIRMAN GRAYBILL: I think I have closed the
10 vote so you can't change your vote, but put the question again.
11 Mr. Felt wanted to change his vote. I had closed the vote.
12 I will be glad to let somebody put the motion again if you
13 want to.

14 Mr. Joyce.

15 DELEGATE JOYCE: Mr. Chairman. I move that the
16 Committee of the Whole reconsider its action on the executive
17 article for the purpose of deleting from the constitution
18 the office of state treasurer.

19 CHAIRMAN GRAYBILL: You have to move that you want
20 to suspend the rules, Mr. Joyce.

21 DELEGATE JOYCE: Didn't I say that? I move to
22 suspend the rules for that purpose.

23 CHAIRMAN GRAYBILL: Let's vote again on suspending
24 the rules. Do you want to clear the machine? Is there
25 further discussion? Very well. We're ready to vote again.

1 Use the voting machine. So many as shall be in favor of sus-
2 pending the rules, vote Aye. So many as shall be opposed to
3 suspending the rules, vote No. The vote is now fifty-eight to
4 twenty-six. The light has just struck the Chair. The rule
5 is two-thirds or fifty-one percent, whichever is less. Since
6 we didn't get fifty-one last time, that lost, but this one
7 passes. We're now in a position to suspend the rules and con-
8 sider the executive article in terms of the treasurer's of-
9 fice. The rules are now suspended. Does Mr. Roeder or Mr.
10 Felt or Mr. Joyce care to make a motion concerning the treas-
11 urer's office? Since they moved to suspend, Mr. Brazier, I'm
12 going to give them the opportunity to make their motion. Then,
13 I'll certainly come back to you.

14 DELEGATE JOYCE: Mr. President.

15 CHAIRMAN GRAYBILL: Mr. Joyce. We have to make a
16 motion to reconsider. You tell us what you want to reconsider.

17 DELEGATE JOYCE: I move to reconsider section one,
18 sub one, of the executive article by deleting on line ten,
19 the word, treasurer. I further move to amend section two,
20 line nineteen, by deleting the word, treasurer, and further
21 move to amend section three, line thirty to delete the word,
22 treasurer.

23 CHAIRMAN GRAYBILL: I'm not sure that the executive
24 article is right here. Maybe I'm wrong. Didn't we adopt some
25 duties for these officers? Where are they? Yes, it would be

1 on page two, Mr. Joyce, section four, sub five. It has the
2 word treasurer in it if you're looking for that.

3 DELEGATE JOYCE: I further move that section four,
4 subsection five, line twenty-six, on page two, that the word
5 treasurer be deleted. I further move in section six, line
6 eighteen, subsection two, that the word treasurer be deleted.

7 CHAIRMAN GRAYBILL: That's on page three, line
8 eighteen.

9 DELEGATE JOYCE: I further move that section seven
10 on line thirty, the words, and treasurer, be deleted and that
11 the word, and, be inserted after the word, instruction on
12 line twenty-nine before the word, auditor.

13 CHAIRMAN GRAYBILL: Very well, Mr. Joyce has moved
14 to reconsider portions of sections one, two, three, four, six
15 and seven referring to treasurer.

16 Mr. Joyce.

17 DELEGATE JOYCE: Mr. Chairman. It has just been
18 called to my attention that I'm out of order because I didn't
19 vote on the prevailing side. Mr. Brazier is willing to make
20 that same motion. For the record, I guess you can substitute
21 his.

22 CHAIRMAN GRAYBILL: Mr. Brazier, do you care to
23 make that motion?

24 DELEGATE BRAZIER: Yes. Mr. Chairman, having voted
25 on the prevailing side, I now make the motion that Mr. Joyce

1 attempted to make.

2 CHAIRMAN GRAYBILL: All right. Mr. Brazier has now
3 made the motion to reconsider sections one, two, three, four,
4 six and seven as regards the reference in those sections to
5 the word treasurer. Is there discussion?

6 Mr. Brazier.

7 DELEGATE BRAZIER: Just briefly, my reasoning is
8 I've felt a little concern. I think that some of the delegates
9 have been unfairly castigated for the results of the executive
10 article. I came here willing to cut back on the number of
11 executive offices. At the same time, I will defend my decision
12 to try to retain, as an elected officer, at least one person
13 who is on the cash flow of state funds and has a chance to
14 preserve evidence in case of embezzlement and that sort of
15 abuse of power. I don't feel that I got a meaningful chance
16 to reflect in my tally, when we considered the majority report,
17 what I really thought. I think that the motion I just made
18 more clearly reflects my philosophy. Thank you, Mr. Chairman.

19 CHAIRMAN GRAYBILL: Mr. Mahoney.

20 DELEGATE MAHONEY: As a point of information, Mr.
21 President, did we open up this article -- like section two; is
22 that opened up so that we could cut out some more elective
23 offices?

24 CHAIRMAN GRAYBILL: The motion to suspend the rules
25 was to remove an officer. My notes only show to remove an

1 officer. I think he did mention the treasurer specifically.
2 I don't know that he mentioned others. Did you mention just
3 the treasurer?

4 DELEGATE ROEDER: Yes, I did.

5 CHAIRMAN GRAYBILL: Pardon?

6 DELEGATE ROEDER: To suspend the rules, I mentioned
7 only the treasurer.

8 CHAIRMAN GRAYBILL: All right. Mr. Joyce, in your
9 motion -- let's see. Mr. Felt, in your motion to suspend the
10 rules, what did you mention?

11 DELEGATE FELT: I didn't mention any particular
12 office, but I understood it related only to the treasurer.

13 CHAIRMAN GRAYBILL: All right. So, it's open now,
14 Mr. Mahoney, for the treasurer at the moment.

15 DELEGATE MAHONEY: Didn't we open up the whole
16 section, Mr. Chairman? Can we just go in and take one word
17 out of a section, under the rules? Or, is the whole section
18 open?

19 CHAIRMAN GRAYBILL: Rule Seventy-four says: One or
20 more rules may be suspended for a specified purpose by the
21 affirmative vote of two-thirds or a majority of all the dele-
22 gates of the convention. So, it has to be for a specified
23 purpose. I think you're limited to the purpose they specified.
24 That's why I insist they write down -- and I still expect Mr.
25 Felt and Mr. Roeder to write down their purpose. They have

1 now said that their purpose is treasurer. I'm not against
2 entertaining another one to open for another purpose, Mr.
3 Mahoney, but I think this one opens it for the purpose of tak-
4 ing out the office of treasurer.

5 DELEGATE MAHONEY: All that is bothering me, Mr.
6 Chairman, is this. If we're going to open up a section, I
7 don't think we can limit that section to only one thing. If
8 you open the whole section, I think the whole section is either
9 opened or it isn't opened. I know the Chair's position and
10 I don't want to question it. I just think that this ruling
11 should be made because this is going to come up lots of times
12 from now on if we're going into Style and Drafting to recon-
13 sideration. I think this is a problem we have to get settled
14 this morning.

15 CHAIRMAN GRAYBILL: All right, Mr. Mahoney, I'll
16 settle it and then you can challenge the Chair. One or more
17 rules may be suspended for a specified purpose by the affirm-
18 ative vote of, etc. The Chair is going to rule and the Chair
19 has made this quite clear to everybody who has done this so
20 far, that they must write down the purpose for which they open.
21 I'm going to rule that the rules are suspended only for the
22 purpose that they announce because that's what the other people
23 vote on. They vote assuming that that's the purpose that it's
24 going to be opened for. So, if you want to enlarge the pur-
25 pose, you can either make another one, or the next time this

1 comes up, you may move to amend the purpose so that everybody
2 understands what we're doing. But, at this point, the Chair
3 is going to rule that we voted to open the executive article
4 for the specific purpose of dealing with the office of treas-
5 urer. I think that's a definable purpose. That's what the
6 rules say and it's what I'm going to rule. If you want to
7 challenge the Chair, go ahead.

8 DELEGATE MAHONEY: I won't be prohibited from making
9 another motion at this time to open this section up so that
10 I can get at the lieutenant governor, could I?

11 CHAIRMAN GRAYBILL: No, you certainly may. I'll be
12 glad to put you down on the list with Mrs. Bates and Mr.
13 Brazier. All right, the motion of Mr. Brazier is to recon-
14 sider sections one, two, three, four, six and seven concerning
15 the office of treasurer. Is there further discussion? All
16 in favor of Mr. Brazier's motion to reopen sections one, two,
17 three, four, six and seven to consider treasurer, please say
18 Aye.

19 DELEGATES: Aye.

20 CHAIRMAN GRAYBILL: Opposed, No.

21 DELEGATES: No.

22 CHAIRMAN GRAYBILL: The Ayes have it. Now, the
23 section is open. Mr. Brazier or Mr. Joyce, do you want to
24 move to delete those words?

25 DELEGATE JOYCE: Mr. Chairman. I move that the Style

1 and Drafting Report on the executive article be amended by
2 deleting in section one, line ten, the word, treasurer; in
3 section three, line thirty, the word, treasurer; in section two,
4 line nineteen, the word, treasurer; section four, line twenty-
5 six, the word, treasurer; section six, line eighteen, the word
6 treasurer; section seven, line thirty, the words, and treasurer
7 and insert in line twenty-nine after the word, instruction,
8 and before the word, auditor, the word, and.

9 CHAIRMAN GRAYBILL: Very well. Mr. Joyce has now
10 made a motion to delete the word, treasurer, from sections one,
11 two, three, four, six and seven. Is there discussion?

12 Mr. Arbanas.

13 DELEGATE ARBANAS: Mr. Chairman and fellow delegates.
14 I'd like to speak in favor of the motion. I was on the Execu-
15 tive Committee. This was the majority report at the beginning.
16 When we discussed it on the floor, I kind of had the impression
17 that maybe I had read the voters of Montana wrong. We talked
18 for two or three minutes about it, and everyone seemed to
19 think that the voters would not respond to that type of short-
20 ening the ballot. I was extremely surprised when I found out
21 that probably no other item were we more criticized for. Cer-
22 tainly we're not wild-eyed liberals or people willing to change
23 government radically. We just couldn't understand how we had
24 acted so incongruent with the facts of the executive department.
25 It seems to me that it's rather obvious to a lot of people that

1 a simple job that is done in some office and cannot be really
2 visible to the voters of Montana cannot be properly handled
3 by the state-wide vote. I think a lot of people understand
4 that very well.

5 CHAIRMAN GRAYBILL: The issue is on Mr. Joyce's
6 motion to delete references to treasurer in sections one, two,
7 three, four, six and seven of the executive article.

8 Mr. Wilson.

9 DELEGATE WILSON: Mr. President. I, too, served on
10 the Executive Committee and there was a lot of discussion
11 about this. I don't think that I need to go into all the argu-
12 ment that we had when we were discussing the minority of the
13 executive article and the majority report. Perhaps this did
14 come under some criticisms from some quarters. I can assure
15 you that if you took this question out to all of the people of
16 Montana, you wouldn't get criticism for it. You would get
17 comments in favor of it. Now, we're talking about the person
18 that keeps the cash for you people. You've all expressed a
19 lot of concern about your government agencies. You have, in
20 the passing of your Revenue and Finance Committee Proposal,
21 certainly created other problems as to what your cash and cash
22 balances will be. They talk about this person. Nobody knows
23 him. Nobody knows anything about the treasurer and I submit
24 to you that the person who holds the treasurer's office got
25 probably one of the largest votes in the last election. There

1 has always been an interest in the treasurer's office and who
2 ran for it. There again, we hear the argument that we want the
3 people and the young people to have the right to vote. Who
4 are you going to vote for? Do you want to remove another of-
5 fice that these people are going to vote for? Do I have to
6 reinstate my policy to begin with that you're disfranchising
7 the people's right to vote when you remove the higher offices
8 in the state government? I suggest that when you look this
9 proposal over, that you think about the part that your treas-
10 urer plays along with your auditor, in keeping the accounts
11 and the cash flow of state government where it is visible for
12 you, the people, to take a look at. Now, if it is the will
13 of you people that you no longer want to have an elected of-
14 ficial who will be responsible to you, the voters, keeping
15 charge of your cash of the Montana state government, so be it.
16 But, I suggest that you think about this just a little bit.
17 It is a responsible position, and I think we should have the
18 right to vote for that person. I resist the motion.

19 CHAIRMAN GRAYBILL: Mr. Lorello.

20 DELEGATE LORELLO: Mr. Chairman. I'd like to caution
21 some of the delegates here who think that we're just going to
22 deal right now with the treasurer. We're going to get this
23 thing out of the way and then we're going to progress. This
24 is not the case. We voted on this thing several times. If we
25 now eliminate the treasurer, you can be certain that there's

1 going to be moves on to eliminate some of the other officers.
2 So, if you're going to let this one go, be prepared to let some
3 more go. I'd like to caution you and I'd like to resist Mr.
4 Joyce's motion.

5 CHAIRMAN GRAYBILL: Mr. Roeder.

6 DELEGATE ROEDER: I'd like to respond to both Mr.
7 Lorello and Mr. Wilson. As to opening other offices, I won't
8 make any such motion to open them up because the people who
9 indicated to me in the last few days, that they would support
10 a motion to reconsider, indicated they would do so only to
11 consider the office of treasurer. I would not go back on that
12 agreement. Now, so far as the office being essential that
13 we vote on it, I don't think that's true. The office of
14 treasurer is not required for modern accounting practices.
15 Your money is going to be safe. The fact of the matter is that
16 the office is a historical relic. If you vote to keep it in
17 the constitution, you're voting to keep it there for senti-
18 mental reasons, the way you keep a spittoon in a law library.

19 CHAIRMAN GRAYBILL: Mr. Toole.

20 VICE PRESIDENT TOOLE: Mr. Chairman. I have to
21 refer again to the meeting I attended at Fort Benton a week
22 ago. There were a number of people there from rural communi-
23 ties. The first question I was asked was, why didn't you
24 eliminate those old, outmoded constitutional offices? This
25 comes from a rural group. It comes from a group that I would

1 think would normally support Mr. Wilson. Apparently, they do
2 not. Thank you, Mr. Chairman.

3 CHAIRMAN GRAYBILL: Mr. Martin.

4 DELEGATE MARTIN: Mr. Chairman. I was one of the
5 majority of the committee that endeavored to do everything they
6 could to eliminate these offices. But, as I said on the floor
7 a few days ago when I asked you the question, does this mean
8 that we're going to reopen every article that we've gone
9 through and decided on General Orders? You said you didn't
10 know. We've found the answer. Yesterday, we opened -- reopen-
11 ed - the legislative article. Today, the executive; tomorrow
12 will be judiciary and on down the line. I oppose the motion
13 just for that reason.

14 CHAIRMAN GRAYBILL: Mr. Lorello, you may be next.

15 DELEGATE LORELLO: Mr. Chairman. I'd like to assure
16 Mr. Roeder and some of the others who believe that this isn't
17 going to happen to look this way and you'll see pencils going
18 very strongly. There's some more going to be coming, believe
19 me.

20 CHAIRMAN GRAYBILL: Mr. Monroe.

21 DELEGATE MONROE: Mr. President. I rise in support
22 of us deleting this particular office. On a number of dif-
23 ferent occasions, I've stood before the body and mentioned that
24 I had an opportunity to visit with a lot of people during the
25 two weeks previous to the convention, in excess of eight hun-

1 dred people. Every person that I talked to, I asked them to
2 identify eight people in public offices. The results of that
3 particular survey were very, very discouraging. Less than
4 fifty percent of the people could identify fifty percent out
5 of eight of those public officials that I asked them to iden-
6 tify -- everybody from President Nixon to some of our legis-
7 lators that are now serving in our legislature. From that
8 survey, I really can't see where it's very meaningful for the
9 people of our state to go to the polls every four years and
10 put into office someone who they really don't even know. They
11 are just marking an X on a ballot. It's more or less like a
12 lottery to them, and especially in the case of this particular
13 office of treasurer. Does that person really treasure, do
14 they really have the job, are they really necessary? I support
15 deleting this particular state office in the constitution be-
16 cause of the research that I have done and because of the stand
17 that the majority of this committee took, and also because I
18 don't think that job is necessary today. Thank you.

19 CHAIRMAN GRAYBILL: Mrs. Warden.

20 DELEGATE WARDEN: I would just like to say that I
21 am supporting the motion to delete the treasurer. However,
22 when you delete the treasurer, it does not mean that you are
23 eliminating the treasurer. This is still provided for by
24 statute and I would assume that it would continue to be an
25 elective office.

1 CHAIRMAN GRAYBILL: Mr. Harrington.

2 DELEGATE HARRINGTON: Mr. Chairman. I rise to oppose
3 the motion to delete the treasurer. I feel this would be a
4 harsh thing for this convention to do at this time. Last
5 night after we left here, the first thing I heard as we were
6 driving out of the lot was that the Constitutional Convention
7 did it again. It changed its mind again. I think that some-
8 times the people are going to say, first we do it today and
9 then we don't do it tomorrow. I hope we don't get this type
10 of publicity all the time. Thank you.

11 CHAIRMAN GRAYBILL: Mr. Kamhoot.

12 DELEGATE KAMHOOT: Mr. Chairman. I think Delegate
13 Harrington really touched on something here. Delegate Monroe
14 said that he interviewed a lot of people who didn't know these
15 officers. Well, I'm sure that everyone in the state of Mon-
16 tana is going to know everyone in this Constitutional Conven-
17 tion, if we change our minds every week and take a different
18 direction. It seems to me that we worked in the committees.
19 We've debated this stuff thoroughly. We've gone over it time
20 and again. Like Delegate Martin said, if we're going to
21 start bringing everything back and start all over again, I just
22 wonder how in the world we can expect the people to ever have
23 any confidence in us writing a constitution. We're trying to
24 write one here that's going to last a hundred years. Every
25 week, we change our minds and take a different direction. To

1 use the phrase of Carl Davis, I think we just ought to let the
2 tail go with the hide here and call it quits. Thank you, Mr.
3 Chairman.

4 CHAIRMAN GRAYBILL: Mrs. Erdmann.

5 DELEGATE ERDMANN: Mr. President. I rise in opposi-
6 tion to the motion. We have absolutely no assurance, once
7 this office is taken out of the constitution, that it will re-
8 main an elective office. I have stated right along, that
9 every time you remove an elected office, and give it to the
10 power of the governor to appoint, you have taken democracy one
11 step away from the people. I thought that the purpose of this
12 convention was to get the government closer to the people. I
13 therefore oppose the motion. Thank you.

14 CHAIRMAN GRAYBILL: Mr. Joyce, do you want to close?

15 DELEGATE JOYCE: Mr. Chairman. It seems to me that
16 no useful purpose would be served by making extended argument
17 one way or the other. All of the delegates have heard all of
18 the arguments. I'll just submit it to the delegates on the
19 record that has been made.

20 CHAIRMAN GRAYBILL: Very well. The issue before
21 you is Mr. Joyce's motion to delete the concept of treasurer
22 from sections one, two, three, four, six and seven of the
23 executive article. We'll have a roll call vote on it. All
24 those in favor of deleting, vote Aye. All those opposed, vote
25 No. Has every delegate voted? Any delegate wish to change

1	his vote? Will the clerk take the ballot?			
2	Aasheim	- Aye	Champoux	- Aye
3	Anderson, J.	- Nay	Choate	- Aye
4	Anderson, O.	- Nay	Conover	- Aye
5	Arbanas	- Aye	Cross	- Nay
6	Arness	- Abs	Dahood	- Aye
7	Aronow	- Nay	Davis	- Aye
8	Artz	- Nay	Delaney	- Aye
9	Ask	- Nay	Driscoll	- Nay
10	Babcock	- Nay	Drum	- Nay
11	Barnard	- Nay	Eck	- Aye
12	Bates	- Abs	Erdmann	- Nay
13	Belcher	- Nay	Eskildsen	- Abs
14	Berg	- Nay	Etchart	- Nay
15	Berthelson	- Aye	Felt	- Aye
16	Blaylock	- Aye	Foster	- Aye
17	Blend	- Aye	Furlong	- Aye
18	Bowman	- Aye	Garlington	- Aye
19	Brazier	- Aye	Graybill	- Aye
20	Brown	- Aye	Gysler	- Aye
21	Bugbee	- Aye	Habedank	- Aye
22	Burkhardt	- Aye	Hanson, R. S.	- Nay
23	Cain	- Aye	Hanson, R.	- Aye
24	Campbell	- Abs	Harbaugh	- Aye
25	Cate	- Aye	Harlow	- Aye



1	Harper	-	Aye	Payne	-	Aye
2	Harrington	-	Nay	Pemberton	-	Abs
3	Heliker	-	Abs	Rebal	-	Nay
4	Holland	-	Abs	Reichert	-	Aye
5	Jacobsen	-	Nay	Robinson	-	Aye
6	James	-	Aye	Roeder	-	Aye
7	Johnson	-	Nay	Rollins	-	Aye
8	Joyce	-	Aye	Romney	-	Aye
9	Kamhoot	-	Nay	Rygg	-	Aye
10	Kelleher	-	Aye	Scanlin	-	Aye
11	Leuthold	-	Nay	Schiltz	-	Aye
12	Loendorf	-	Aye	Siderius	-	Aye
13	Lorello	-	Nay	Simon	-	Nay
14	Mahoney	-	Abs	Skari	-	Aye
15	Mansfield	-	Nay	Sparks	-	Aye
16	Martin	-	Nay	Speer	-	Aye
17	McCarvel	-	Nay	Studer	-	Abs
18	McDonough	-	Aye	Sullivan	-	Aye
19	McKeon	-	Nay	Swanberg	-	Abs
20	McNeil	-	Nay	Toole	-	Aye
21	Melvin	-	Aye	Van Buskirk	-	Aye
22	Monroe	-	Aye	Vermillion	-	Nay
23	Murray	-	Aye	Wagner	-	Aye
24	Noble	-	Nay	Ward	-	Abs
25	Nutting	-	Nay	Warden	-	Aye

1 Wilson - Nay Woodmansey - Nay

2 CLERK SMITH: Mr. Chairman, fifty-six have voted
3 Aye, thirty-three have voted No.

4 CHAIRMAN GRAYBILL: Fifty-six having voted Aye and
5 thirty-three having voted No, the motion to delete the treas-
6 urer from the executive article is adopted.

7 Mr. Mahoney.

8 DELEGATE MAHONEY: I move to suspend the rules to
9 open up everything in regard to the lieutenant governor.

10 CHAIRMAN GRAYBILL: Mr. Mahoney has moved to suspend
11 the rules on the executive article to open up the article to
12 discuss the office of lieutenant governor wherever it may
13 appear throughout.

14 Mr. Mahoney.

15 CHAIRMAN GRAYBILL: Mr. President. Here is an office
16 that I think could be just as well handled by the governor.
17 We could give him an administrative aid, an additional one,
18 and then in case of death of the governor, either the presi-
19 dent of the senate or the speaker of the house could be gov-
20 ernor in case of death only. Now, we're only twenty-four
21 hours away from any spot in the world. We had a president in
22 Peking sign a bill that became law. Now, I think we could
23 get along beautifully without a lieutenant governor. This
24 idea of running as a team is nice, but this fellow will con-
25 tinue to be elected by the people and he's going to get his

1 own ideas of operation. Or, we could turn around and get
2 dynasty set up here where the governor picks his lieutenant
3 governor candidate as he goes along, and we will have a dynasty.
4 This is the reason for my motion. If I do, I will then ask
5 it to be sent back to Style and Drafting. This can't be
6 done on this floor -- to send back to Style and Drafting with
7 the instructions to get out the lieutenant governor and to
8 put in the president of the senate or the speaker of the house,
9 whichever this group feels should be next, only in case of
10 death.

11 CHAIRMAN GRAYBILL: Is there discussion? Very
12 well. The issue arises on Mr. Mahoney's motion to suspend
13 the rules to reconsider the executive article concerning the
14 lieutenant governor. We'll have a roll call vote. So many
15 as shall be in favor of that, vote Aye. So many as shall be
16 opposed, vote No. Has every delegate voted? Does any dele-
17 gate wish to change his vote? Will the clerk take the
18 ballot?

19 Aasheim	- Nay	Ask	- Nay
20 Anderson, J.	- Aye	Babcock	- Nay
21 Anderson, O.	- Nay	Barnard	- Aye
22 Arbanas	- Aye	Bates	- Nay
23 Arness	- Nay	Belcher	- Nay
24 Aronow	- Aye	Berg	- Nay
25 Artz	- Aye	Berthelson	- Nay

1	Blaylock	- Aye	Furlong	- Nay
2	Blend	- Aye	Garlington	- Nay
3	Bowman	- Aye	Graybill	- Nay
4	Brazier	- Nay	Gysler	- Nay
5	Brown	- Aye	Habedank	- Nay
6	Bugbee	- Nay	Hanson, R. S.	- Aye
7	Burkhardt	- Aye	Hanson, R.	- Nay
8	Cain	- Aye	Harbaugh	- Aye
9	Campbell	- Abs	Harlow	- Aye
10	Cate	- Abs	Harper	- Aye
11	Champoux	- Nay	Harrington	- Nay
12	Choate	- Nay	Heliker	- Abs
13	Conover	- Nay	Holland	- Abs
14	Cross	- Aye	Jacobsen	- Nay
15	Dahood	- Nay	James	- Nay
16	Davis	- Abs	Johnson	- Nay
17	Delaney	- Aye	Joyce	- Nay
18	Driscoll	- Nay	Kamhoot	- Abs
19	Drum	- Nay	Kelleher	- Aye
20	Eck	- Nay	Leuthold	- Nay
21	Erdmann	- Nay	Loendorf	- Nay
22	Eskildsen	- Abs	Lorello	- Abs
23	Etchart	- Nay	Mahoney	- Aye
24	Felt	- Nay	Mansfield	- Aye
25	Foster	- Aye	Martin	- Nay

1	McCarvel	-	Nay	Scanlin	-	Nay
2	McDonough	-	Aye	Schiltz	-	Nay
3	McKeon	-	Nay	Siderius	-	Nay
4	McNeil	-	Nay	Simon	-	Nay
5	Melvin	-	Nay	Skari	-	Aye
6	Monroe	-	Nay	Sparks	-	Nay
7	Murray	-	Nay	Speer	-	Nay
8	Noble	-	Aye	Studer	-	Nay
9	Nutting	-	Aye	Sullivan	-	Nay
10	Payne	-	Aye	Swanberg	-	Abs
11	Pemberton	-	Abs	Toole	-	Nay
12	Rebal	-	Nay	Van Buskirk	-	Aye
13	Reichert	-	Nay	Vermillion	-	Nay
14	Robinson	-	Aye	Wagner	-	Nay
15	Roeder	-	Nay	Ward	-	Abs
16	Rollins	-	Nay	Warden	-	Nay
17	Romney	-	Nay	Wilson	-	Abs
18	Rygg	-	Nay	Woodmansey	-	Nay

19 CLERK SMITH: Mr. Chairman, twenty-eight have voted
20 Aye, sixty have voted No.

21 CHAIRMAN GRAYBILL: Sixty voting No, twenty-eight
22 having voted Aye, Mr. Mahoney's motion to suspend the rules
23 fails.

24 Mr. Foster. Please send me up your motions. I
25 want those for the file.

1 Mr. Foster.

2 DELEGATE FOSTER: Mr. Chairman, would you read my
3 motion please?

4 CHAIRMAN GRAYBILL: All right. Mr. Foster says he
5 moves to suspend the rules for the purpose of reconsidering
6 the office of secretary of state in the Style and Drafting
7 Report Number Four of the executive article. Mr. Foster
8 wants to suspend the rules to consider the office of secretary
9 of state in the executive article.

10 Mr. Foster.

11 DELEGATE FOSTER: I think the intent of my motion
12 is quite clear. I don't think it's necessary for me to make
13 a long, belabored speech. Thank you, Mr. Chairman.

14 CHAIRMAN GRAYBILL: Is there discussion? Very
15 well. The question arises on Mr. Foster's motion to suspend
16 the rules so that the office of secretary of state can be
17 reconsidered wherever it appears in the report of the execu-
18 tive article. Do you want a roll call vote? Very well.
19 All in favor of suspending the rules on the secretary of
20 state, vote Aye. All opposed, vote No. Have all the dele-
21 gates voted? Does any delegate wish to change his vote?
22 Will the clerk please take the ballot?

23 Aasheim	- Aye	Arbanas	- Aye
24 Anderson, J.	- Nay	Arness	- Nay
25 Anderson, O.	- Nay	Aronow	- Nay

1	Artz	-	Aye	Driscoll	-	Nay
2	Ask	-	Nay	Drum	-	Abs
3	Babcock	-	Nay	Eck	-	Aye
4	Barnard	-	Nay	Erdmann	-	Nay
5	Bates	-	Nay	Eskildsen	-	Abs
6	Belcher	-	Nay	Etchart	-	Nay
7	Berg	-	Nay	Felt	-	Aye
8	Berthelson	-	Nay	Foster	-	Aye
9	Blaylock	-	Aye	Furlong	-	Aye
10	Blend	-	Aye	Garlington	-	Nay
11	Bowman	-	Aye	Graybill	-	Nay
12	Brazier	-	Nay	Gysler	-	Nay
13	Brown	-	Aye	Habedank	-	Aye
14	Bugbee	-	Abs	Hanson, R. S.	-	Nay
15	Burkhardt	-	Aye	Hanson, R.	-	Nay
16	Cain	-	Nay	Harbaugh	-	Aye
17	Campbell	-	Abs	Harlow	-	Nay
18	Cate	-	Aye	Harper	-	Nay
19	Champoux	-	Nay	Harrington	-	Nay
20	Choate	-	Aye	Heliker	-	Abs
21	Conover	-	Nay	Holland	-	Abs
22	Cross	-	Abs	Jacobsen	-	Nay
23	Dahood	-	Abs	James	-	Nay
24	Davis	-	Abs	Johnson	-	Nay
25	Delaney	-	Aye	Joyce	-	Nay

1	Kamhoot	- Abs	Roeder	- Nay
2	Kelleher	- Aye	Rollins	- Nay
3	Leuthold	- Nay	Romney	- Nay
4	Loendorf	- Aye	Rygg	- Nay
5	Lorello	- Abs	Scanlin	- Aye
6	Mahoney	- Nay	Schiltz	- Nay
7	Mansfield	- Nay	Siderius	- Nay
8	Martin	- Abs	Simon	- Nay
9	McCarvel	- Nay	Skari	- Abs
10	McDonough	- Aye	Sparks	- Nay
11	McKeon	- Nay	Speer	- Aye
12	McNeil	- Nay	Studer	- Nay
13	Melvin	- Nay	Sullivan	- Nay
14	Monroe	- Aye	Swanberg	- Abs
15	Murray	- Nay	Toole	- Nay
16	Noble	- Nay	Van Buskirk	- Aye
17	Nutting	- Aye	Vermillion	- Nay
18	Payne	- Aye	Wagner	- Nay
19	Pemberton	- Abs	Ward	- Abs
20	Rebal	- Nay	Warden	- Nay
21	Reichert	- Aye	Wilson	- Nay
22	Robinson	- Aye	Woodmansey	- Nay

23 CLERK SMITH: Mr. Chairman, twenty-eight voted Aye,
 24 and fifty-six voted No.

25 CHAIRMAN GRAYBILL: Fifty-six having voted No and

1 only twenty-eight Aye, Mr. Foster's motion fails.

2 Mr. Cate.

3 DELEGATE CATE: Mr. Chairman and fellow delegates.

4 I made a great speech here the other day. My delivery wasn't
5 too good, but I talked about the attorney general's office and
6 why that office really ought to be eliminated. There's a
7 quarter of a million dollars a year being paid out to private
8 counsel because of the conflict between the attorney general's
9 office and the governor's office. The governor of the state
10 of Montana ought to have his own attorney. Throughout the
11 history of Montana, he has not had his own attorney. Governor
12 Anderson is faced with a republican attorney general, Robert
13 Woodahl. Governor Anderson cannot rely on the advise of the
14 attorney general so he has to hire private counsel, not only
15 for himself but for all of the agencies of the executive de-
16 partment. This same situation existed when Governor Babcock
17 was governor and Forrest Anderson was attorney general. I
18 know that situation well because I worked in that office, and
19 there was a constant vying for political advantage between
20 the two offices. The situation existed previously when Arnold
21 Olsen was attorney general and Aronson was governor. This is
22 a situation that drastically needs correction. The president
23 of the United States appoints his chief legal officer, the
24 attorney general. The governor of Montana should be allowed
25 to do that also. It would result in a more efficient and

1 effective state government. The office of attorney general
2 in thirty-five other states is appointed by the governor. It
3 seems to work in those areas and I think it can work also in
4 Montana. Now, a comment was made after I made my plea for
5 this last time, that the attorney general of Montana was
6 responsible for bringing the charges against Mr. McGaffick or
7 for bringing them out into the open. The legislative auditor
8 was the one who brought those charges out in the open. The
9 comment was made that the Alice Creek state lands situation
10 up at Lincoln was something that was brought out by the
11 attorney general. That's not true, because that was brought
12 out by a reporter by the name of Dick Gilluly from Billings.
13 It wasn't until Dick Gilluly got on the subject that anything
14 happened with it. I don't think that the attorney general
15 constitutes that much of an inhibition to the governor com-
16 mitting fraud, that it's necessary that he remain an elective
17 office. I would simply urge you to look at this situation.
18 It's a rotten mess. It ought to be cleaned up. We have
19 an opportunity here to do that. Thank you very much. I
20 would request a roll call vote on that too. Thank you.

21 CHAIRMAN GRAYBILL: Is there other discussion?
22 Mr. Kelleher.

23 DELEGATE KELLEHER: The present system does not
24 work well and it is expensive. It is a waste of the taxpayers'

25

1 money and I heartily support Mr. Cate's motion.

2 CHAIRMAN GRAYBILL: Mr. Swanberg. Very well. The
3 question arises on Mr. Cate's motion to suspend the rules to
4 consider the office of the attorney general as it appears
5 throughout the executive article. All in favor of eliminating --
6 reopening -- suspending the rules to consider the attorney
7 general, vote Aye, and those opposed, vote No. Has every
8 delegate voted? Does any delegate wish to change his vote?
9 Will the clerk take the ballot?

10	Aasheim	-	Nay	Bowman	-	Aye
11	Anderson, J.	-	Nay	Brazier	-	Nay
12	Anderson, O.	-	Nay	Brown	-	Aye
13	Arbanas	-	Aye	Bugbee	-	Abs
14	Arness	-	Nay	Burkhardt	-	Aye
15	Aronow	-	Nay	Cain	-	Aye
16	Artz	-	Aye	Campbell	-	Abs
17	Ask	-	Nay	Cate	-	Aye
18	Babcock	-	Nay	Champoux	-	Aye
19	Barnard	-	Nay	Choate	-	Aye
20	Bates	-	Aye	Conover	-	Abs
21	Belcher	-	Nay	Cross	-	Aye
22	Berg	-	Aye	Dahood	-	Abs
23	Berthelson	-	Nay	Davis	-	Abs
24	Blaylock	-	Aye	Delaney	-	Aye
25	Blend	-	Aye	Driscoll	-	Nay

1	Drum	-	Abs	Kelleher	-	Aye
2	Eck	-	Aye	Leuthold	-	Nay
3	Erdmann	-	Nay	Loendorf	-	Abs
4	Eskildsen	-	Abs	Lorello	-	Abs
5	Etchart	-	Nay	Mahoney	-	Nay
6	Felt	-	Aye	Mansfield	-	Nay
7	Foster	-	Aye	Martin	-	Nay
8	Furlong	-	Abs	McCarvel	-	Nay
9	Garlington	-	Nay	McDonough	-	Aye
10	Graybill	-	Nay	McKeon	-	Aye
11	Gysler	-	Nay	McNeil	-	Nay
12	Habedank	-	Aye	Melvin	-	Abs
13	Hanson, R. S.	-	Nay	Monroe	-	Abs
14	Hanson, R.	-	Nay	Murray	-	Nay
15	Harbaugh	-	Nay	Noble	-	Nay
16	Harlow	-	Nay	Nutting	-	Nay
17	Harper	-	Aye	Payne	-	Aye
18	Harrington	-	Abs	Pemberton	-	Abs
19	Heliker	-	Aye	Rebal	-	Nay
20	Holland	-	Abs	Reichert	-	Nay
21	Jacobsen	-	Aye	Robinson	-	Nay
22	James	-	Aye	Roeder	-	Abs
23	Johnson	-	Nay	Rollins	-	Nay
24	Joyce	-	Nay	Romney	-	Nay
25	Kamhoot	-	Nay	Rygg	-	Nay

1	Scanlin	- Aye	Swanberg	- Aye
2	Schiltz	- Abs	Toole	- Nay
3	Siderius	- Aye	Van Buskirk	- Aye
4	Simon	- Nay	Vermillion	- Nay
5	Skari	- Aye	Wagner	- Nay
6	Sparks	- Nay	Ward	- Nay
7	Speer	- Aye	Warden	- Nay
8	Studer	- Nay	Wilson	- Nay
9	Sullivan	- Nay	Woodmansey	- Nay

10 CLERK HANSON: Mr. Chairman, thirty-three Delegates
11 voting Aye, fifty voting No.

12 CHAIRMAN GRAYBILL: Fifty having voted No and only
13 thirty-three Aye, Mr. Cate's motion fails.

14 Mrs. Bates, we're back to you.

15 DELEGATE BATES: Mr. President. In regard to the
16 section -- I think it's fourteen -- on succession, and the
17 members present and voting that we added to this, I wonder if
18 we really meant this, because it's something that we have
19 added to the other articles. When we consider two-thirds of
20 this body which is sixty-seven voting, then if we consider
21 two-thirds of those voting and present, that's only forty-four.
22 When we talk of a successor to the governor, or disqualifying
23 him, I wonder if this is what we really meant.

24 CHAIRMAN GRAYBILL: Mrs. Bates, tell us again what
25 section you're talking about.

1 DELEGATE BATES: Section fourteen.

2 CHAIRMAN GRAYBILL: On what?

3 DELEGATE BATES: On succession. It would be under
4 sub five.

5 CHAIRMAN GRAYBILL: Sub five.

6 DELEGATE BATES: On line twenty-seven.

7 CHAIRMAN GRAYBILL: On line twenty-seven.

8 DELEGATE BATES: On page sixteen, where we inserted
9 the words, present and voting in going through it just a few
10 minutes ago. I wonder if this is what we really meant, be-
11 cause present and voting could mean only forty-four of a body
12 of a hundred actually acting on this.

13 CHAIRMAN GRAYBILL: Is Mr. Schiltz there?

14 DELEGATE BATES: In just talking to Mr. Schiltz, he
15 said, well, it seems this was the motion from the floor. He,
16 too, questioned it.

17 CHAIRMAN GRAYBILL: In a moment, we'll get Mr.
18 Schiltz, I hope. The Chair wants to point out another problem
19 here and I'd like Mr. Schiltz to hear. I'll come to you, Mrs.
20 Eck, in a minute. Mr. Schiltz, we need you. We're on section
21 fourteen, sub five, where the governor is disabled and we put
22 in the words, present and voting, on line nineteen so that it
23 says: If the legislature, within twenty-one days after con-
24 vening, determines by a two-thirds vote of its members present
25 and voting, that the governor is unable to discharge the

1 duties. Mrs. Bates raises the question of whether we mean
2 present and voting, if that isn't too small a number. I have
3 another problem. If you'll look down on line twenty-seven, it
4 says: Unless the legislature determines otherwise by a two-
5 thirds vote of its members, so we've got two different kinds
6 of votes in the same section. Maybe that's what we mean, but
7 I just want to call that to your attention. Mrs. Eck, do you
8 see that problem too? Mrs. Bates, do you want to make it two-
9 thirds of the members? Is that your point?

10 DELEGATE BATES: Yes, Mr. President. I think this
11 was the intent of this group because this is a pretty serious
12 matter.

13 CHAIRMAN GRAYBILL: All right. Then, why don't you
14 move to reconsider fourteen, sub five? As a matter of fact,
15 I don't think you have to do that. We haven't closed up the
16 article yet.

17 DELEGATE BATES: Well, I move to delete those two
18 words that we inserted here, present and voting. I think
19 that will clear it up.

20 CHAIRMAN GRAYBILL: We only inserted, and voting.
21 You move to delete the words, present and voting, on line nine-
22 teen, is that right?

23 DELEGATE BATES: I think that's where we placed it,
24 yes.

25 CHAIRMAN GRAYBILL: All right. Mrs. Bates amends

1 section fourteen, sub five, on line nineteen by deleting the
2 words, present and voting. The point of this is that this
3 makes it the same as the vote taken in the second half of the
4 section, which is by a vote of two-thirds of its members. The
5 issue is whether or not the condition of the governor -- whether
6 he can serve or not -- should be decided by two-thirds of the
7 total body or two-thirds of those present and voting. Is
8 there discussion on this?

9 DELEGATE BATES: I think that if we read the entire
10 paragraph, Mr. President, it starts out with, within twenty-
11 one days after convening determines by two-thirds of its
12 voters present, that the governor is unable to discharge the
13 powers and duties of his office, then the governor shall serve,
14 etc. Then --

15 CHAIRMAN GRAYBILL: Then it says, thereafter when
16 the governor says that he's ready to resume his powers, it
17 takes two-thirds of its members.

18 DELEGATE BATES: And I think that would clarify it,
19 just leaving it in its original position. Thank you.

20 CHAIRMAN GRAYBILL: All right.

21 Mr. Joyce.

22 DELEGATE JOYCE: Mr. Chairman. I must apologize to
23 the convention in that that was the intention of the Executive
24 Committee to make it that it would have to be two-thirds of
25 the members. Apparently, our drafting made an error in that

1 connection and I would accede to the amendment offered by
2 Delegate Bates.

3 CHAIRMAN GRAYBILL: Mrs. Babcock.

4 DELEGATE BABCOCK: Is the word present deleted too,
5 Mr. Chairman?

6 CHAIRMAN GRAYBILL: Mrs. Bates has moved to delete
7 both the words present and voting.

8 DELEGATE BABCOCK: All right.

9 CHAIRMAN GRAYBILL: Mrs. Eck.

10 DELEGATE ECK: Mr. Chairman. Could I ask a question
11 of Mrs. Bates?

12 CHAIRMAN GRAYBILL: Mrs. Bates, do you yield?

13 DELEGATE BATES: Yes.

14 DELEGATE ECK: Did you, in your motion, delete the
15 word present?

16 DELEGATE BATES: I'll tell you, I was looking at it
17 but I just thought that was a mistake, that present and voting,
18 because that way we could have two-thirds of two-thirds of
19 the body when we looked at it in the second quorum. I'm not
20 certain, but I just wanted to question this group before we
21 made a final decision.

22 DELEGATE ECK: Mr. Chairman.

23 CHAIRMAN GRAYBILL: Mrs. Eck and Mrs. Bates, the
24 Chair made your motion present and voting. Now, if you don't
25 want that, say so, but at the moment the issue before the body

1 is to strike both the words present and voting.

2 DELEGATE ECK: Very good.

3 CHAIRMAN GRAYBILL: Is that all right, Mrs. Bates?

4 She says it's okay. Now, let's see. We're back to Mr.

5 Schiltz.

6 DELEGATE SCHILTZ: Mr. Chairman. I only want to

7 clarify the same thing the two ladies wanted to clarify.

8 CHAIRMAN GRAYBILL: Is there further discussion?

9 If not, the issue arises on Mrs. Bates' motion to delete from
10 line nineteen the words, present and voting, so that the vote
11 required to either say that the governor is unable to discharge
12 or that he is able to discharge, is two-thirds of the members
13 of the legislature. So many as shall be in favor of that
14 motion, say Aye.

15 DELEGATES: Aye.

16 CHAIRMAN GRAYBILL: Opposed.

17 DELEGATES: No.

18 CHAIRMAN GRAYBILL: It's adopted. Now, Mr. Schiltz,
19 will you move fourteen, sub five again? I'll do it for you,
20 Mr. Schiltz. Wait a minute.

21 Mr. Blaylock.

22 DELEGATE BLAYLOCK: Mr. President. I'd like to
23 ask a question of you. As we've got that now, would it be
24 possible for a group within the legislature to simply stay out
25 of the chamber and thus thwart the desires of the chamber?

1 CHAIRMAN GRAYBILL: The way it is now, it takes a
2 two-thirds vote of whatever the membership is. Just as we
3 just got through voting, and it took a fifty-one percent vote
4 or a two-thirds vote. So, of course, it would be possible to
5 thwart if enough stayed away. On the other hand, if you
6 want my opinion, which I'll give you, it seems to me that if
7 you're going to take the governor's office away from him, you
8 ought to make it pretty tough. Mr. Murray, just a moment.
9 (Laughter) Mr. Murray, if you can say to me publicly what
10 you buzzed me about a minute ago, speak up.

11 DELEGATE MURRAY: Mr. Chairman. To clarify this
12 question about staying away in the legislature, my under-
13 standing of the legislative rules is that everybody is re-
14 quired to vote. You can force them to do so by having a call
15 of the convention, so I don't think you can thwart anything
16 in that manner.

17 CHAIRMAN GRAYBILL: Mr. Schiltz.

18 DELEGATE SCHILTZ: Mr. Chairman. I agree whole-
19 heartedly with Mr. Murray. If the legislature was unicameral
20 and had one house, and it had a hundred members in it, it
21 would take sixty-seven people to accomplish this job.

22 CHAIRMAN GRAYBILL: Mr. Schiltz. Before we get too
23 far away, let's readopt fourteen, sub five as amended, because
24 we've amended it again.

25 DELEGATE SCHILTZ: Mr. Chairman. I move that when

1 this committee does arise and report after having had under
2 consideration section fourteen, sub five, of the Style and
3 Drafting Report Number Four, it recommend the same be adopted
4 as reamended.

5 CHAIRMAN GRAYBILL: Very well. So many as are in
6 favor of that motion, say Aye.

7 DELEGATES: Aye.

8 CHAIRMAN GRAYBILL: Opposed, No.

9 (No response)

10 CHAIRMAN GRAYBILL: So ordered.

11 Mr. Aasheim.

12 DELEGATE AASHEIM: Go to page fourteen and make the
13 correction there. On section ten, sub three, line twenty-
14 one delete present and voting. It would read then, two-thirds
15 of the members -- It would read then: If, after the receipt
16 of a veto message, two-thirds of the members approve the bill,
17 it shall become law.

18 CHAIRMAN GRAYBILL: Very well. The Chair will allow
19 Mr. Aasheim's amendment to be considered and it has the effect
20 of saying that to override the governor's veto requires an
21 absolute two-thirds, not just two-thirds of those present and
22 voting. Is there discussion?

23 Mr. Joyce.

24 DELEGATE JOYCE: I rise in opposition to the motion
25 because it seems to me that when the Legislative Committee

1 deferred to the Executive Committee to write the veto section,
2 that it was agreed by both committees that it only had to be
3 two-thirds of the members present to override a veto. It
4 seems to me that we are dealing with entirely different policy
5 considerations here. Overriding a veto is the legislature
6 simply imposing its will against the governor's wishes and
7 that there isn't the need for the strictness and the absolute-
8 ness to accomplish that purpose, while when we're talking
9 about taking the governor's office away, why then it ought to
10 be tougher. I thought it was unanimously agreed by both the
11 Executive and the Legislative Committees, when we submitted
12 this proposal to the floor, that the veto could be overridden
13 by two-thirds of the members present.

14 DELEGATE MAHONEY: I might state that the present
15 constitution says two-thirds of the members present. I think
16 it's tough enough.

17 CHAIRMAN GRAYBILL: Mrs. Bates.

18 DELEGATE BATES: Mr. Chairman. When we amended this
19 a few minutes ago under Style and Drafting, we added, and
20 voting, there. I think this is the part that should be de-
21 leted and left in its original form as coming from Style and
22 Drafting. I think this was our committee's action too.

23 CHAIRMAN GRAYBILL: Mrs. Eck.

24 DELEGATE ECK: Mr. Chairman. I think when this
25 matter was discussed yesterday, our decision was that by adding

1 and voting, we would make unnecessary a process of counting up
2 how many people were present so that you know whether you have
3 enough. I think that the present constitution says just
4 present, but it infers and it has been interpreted, and
5 voting. Since we have done it with the legislative section,
6 I think that it's appropriate also to do it here. Thank you.

7 CHAIRMAN GRAYBILL: Mr. Schiltz.

8 DELEGATE SCHILTZ: Mr. Chairman. If you add those
9 words, and voting -- In my role as chairman of the Style and
10 Drafting Committee, I'll accept anything anybody sends in
11 here, but I'm not talking from that standpoint now. If you
12 put in, and voting, you're inviting the legislature or you're
13 allowing the legislature to say that people don't have to
14 vote. The rules in the legislature when I was there, and I'm
15 sure when Mr. Murray and Mr. Felt were there, was that you are
16 required to vote. That's implicit in the present constitution.
17 If you say, and voting, you're inviting them to say, I can
18 sit there and not vote and thereby defeat just what you're
19 trying to get. So, those words, and voting, shouldn't be in
20 there at all.

21 CHAIRMAN GRAYBILL: Mr. Aasheim.

22 DELEGATE AASHEIM: I made the motion merely for the
23 matter of clarification. I shall now withdraw and support the
24 wording as it is.

25 CHAIRMAN GRAYBILL: All right. Mr. Aasheim has with-

1 drawn his motion and now it's back where it was.

2 Mr. Joyce.

3 DELEGATE JOYCE: Mr. Chairman. As a point of in-
4 formation, we did pass didn't we, in the Committee of the Whole
5 this morning, the motion by Mrs. Eck to add the words, and
6 voting?

7 CHAIRMAN GRAYBILL: Yes, we did.

8 DELEGATE AASHEIM: Having voted on the prevailing
9 side, I move to reconsider our action in that connection.
10 If my motion to reconsider should pass, I would then move to
11 delete the words, and voting.

12 CHAIRMAN GRAYBILL: Just a minute. Let me think a
13 minute. We did not rise and report, but I think you're
14 perhaps right, that we have to -- What's bothering me is
15 that we did not vote to reconsider in the case of section
16 five of Article Fourteen that Mrs. Bates did. I don't want
17 to be fouled up here. I think to be technically correct, Mr.
18 Joyce, I'll hold your matter in abeyance for a moment. To be
19 technically correct, the Chair would like to ask Mrs. Bates,
20 on section fourteen, sub five, where you just took out the
21 words present and voting in the governor's illness case, would
22 you please move to reconsider fourteen, sub five?

23 DELEGATE BATES: Yes, Mr. President, I will do so.

24 CHAIRMAN GRAYBILL: All right. Now, she has moved
25 to reconsider. All in favor, say Aye.

1 DELEGATES: Aye.

2 CHAIRMAN GRAYBILL: Opposed, No.

3 (No response)

4 CHAIRMAN GRAYBILL: Now, will you move to strike
5 the words, present and voting, out of line nineteen, Mrs.
6 Bates?

7 DELEGATE BATES: I move to strike present and voting.

8 CHAIRMAN GRAYBILL: She now moves to strike present
9 and voting out of section fourteen, sub five. Is there dis-
10 cussion? Very well. All in favor, say Aye.

11 DELEGATES: Aye.

12 CHAIRMAN GRAYBILL: Opposed, No.

13 (No response)

14 CHAIRMAN GRAYBILL: Now, I think we've done that
15 right. I didn't want to have an error and have somebody
16 challenge the record. Now, Mr. Joyce, if you want to make a
17 motion to reconsider nine, sub three.

18 DELEGATE JOYCE: I move to reconsider the action of
19 the Committee of the Whole in its consideration of section
20 nine, sub three of the Style and Drafting report on the execu-
21 tive article number four for the reasons I've previously
22 stated, namely to strike the words, and voting, if the motion
23 to reconsider does pass.

24 CHAIRMAN GRAYBILL: It's nine, sub three, Mr. Joyce.

25 DELEGATE JOYCE: Nine, sub three.

1 CHAIRMAN GRAYBILL: Is there discussion? All in
2 favor of Mr. Joyce's motion to reconsider nine, sub three,
3 say Aye.

4 DELEGATES: Aye.

5 CHAIRMAN GRAYBILL: Opposed. I beg your pardon, it
6 is ten, sub three.

7 DELEGATE JOYCE: May the record so show.

8 CHAIRMAN GRAYBILL: Ten, sub three. All in favor
9 say Aye.

10 DELEGATES: Aye.

11 CHAIRMAN GRAYBILL: Opposed, No.

12 DELEGATES: No.

13 CHAIRMAN GRAYBILL: All right, the reconsideration
14 is allowed. Now, Mr. Joyce, do you want to make your motion?

15 DELEGATE JOYCE: Mr. Chairman. I move that section
16 ten, sub three, of the Style and Drafting report on the execu-
17 tive article number four, be amended by striking in line
18 twenty-one after the word, members, the words, and voting,
19 so that if the amendment were to pass, subsection three would
20 read: If, after receipt of a veto message, two-thirds of the
21 members present approve the bill, it shall become law.

22 CHAIRMAN GRAYBILL: Very well. Mr. Joyce's motion
23 is to amend sub three by striking just the words, and voting,
24 which we added this morning. Is there further discussion?

25 Mr. Aasheim.

1 DELEGATE AASHEIM: Mr. Chairman and members of the
2 assembly. I think we're going to have complications here.
3 You're going to have people sitting in their chairs and they
4 are going to refuse to vote and that'll require that you take
5 a total head count to get the total number of members present.
6 If you have a tally on the board, there's no question about
7 it. So, I resist the motion to delete, and voting.

8 CHAIRMAN GRAYBILL: Is there further discussion?
9 Very well. All in favor of Mrs. Bates' motion to strike the
10 words, and voting, say Aye.

11 DELEGATES: Aye.

12 CHAIRMAN GRAYBILL: Opposed, No.

13 DELEGATES: No.

14 CHAIRMAN GRAYBILL: All in favor of striking it,
15 use the voting machines and vote Aye, and opposed, vote No.
16 Have all the delegates voted? Any delegate wish to change
17 his vote? Fifty-five having voted Aye, eighteen voting No,
18 it's adopted. Mr. Schiltz, would you remove section three?

19 DELEGATE SCHILTZ: Mr. Chairman. Can I remove
20 fourteen, five again?

21 CHAIRMAN GRAYBILL: Yes, let's remove both of them.

22 DELEGATE SCHILTZ: Mr. Chairman. I move that when
23 this committee does arise and report after having had under
24 consideration section ten, sub three, of the Style and Drafting
25 Report Number Four, it recommend the same be adopted as re-

1 amended.

2 CHAIRMAN GRAYBILL: All in favor, say Aye.

3 DELEGATES: Aye.

4 CHAIRMAN GRAYBILL: Opposed.

5 (No response)

6 CHAIRMAN GRAYBILL: It's adopted.

7 DELEGATE SCHILTZ: Mr. Chairman. I move that when
8 this committee does arise and report after having had under
9 consideration section fourteen, sub five, of the Style and
10 Drafting Report Number Four, it recommend the same be adopted
11 as reamended.

12 CHAIRMAN GRAYBILL: All in favor, say Aye.

13 DELEGATES: Aye.

14 CHAIRMAN GRAYBILL: Opposed.

15 (No response)

16 CHAIRMAN GRAYBILL: Well, we're right back where we
17 were an hour ago. Are there further motions?

18 Mr. Burkhardt.

19 DELEGATE BURKHARDT: I don't have a motion, Mr.
20 Chairman. I wanted a point of clarification. If, as a matter
21 of style, we discover we've used, and voting -- present and
22 voting -- throughout the document, are we now empowered to
23 take the, and voting, out?

24 CHAIRMAN GRAYBILL: Style and Drafting still has the
25 legislative article, so I guess -- Mr. Schiltz, do you want

1 to speak to that?

2 DELEGATE SCHILTZ: Yes, I would like to speak on
3 that. We consider this to be a substantive matter and there
4 are about three interpretations you can put on it. So, when
5 it comes from the floor in one fashion, we assume that the
6 committee intended it to be present and voting in one case, or
7 only present in another case, and members in another case,
8 which would mean all the members and a fraction of two-thirds
9 of those which would be sixty-seven if it's a hundred. In
10 answer to Mr. Burkhardt, I don't think that the Style and Draft-
11 ing Committee will tamper with that in any way. We interpret
12 that the intent was to send it to us as we get it.

13 CHAIRMAN GRAYBILL: Very well. Are there other
14 matters?

15 Mr. Murray. Mr. Schiltz.

16 DELEGATE SCHILTZ: Mr. Chairman. I move that Style
17 and Drafting Report Number Four be re-referred to Style and
18 Drafting Committee for incorporation of the changes and amend-
19 ments made in the Committee of the Whole this day with the
20 privilege of sending it back to the convention for referral
21 to Order of Business Number Five.

22 CHAIRMAN GRAYBILL: Do you think you want it back,
23 Mr. Schiltz?

24 DELEGATE SCHILTZ: Well, I would assume you would
25 want a clean copy, I don't know.

1 CHAIRMAN GRAYBILL: We'll get a clean copy in any
2 event. I don't care. You can do it that way, but the two
3 things we double changed are right back to your language.

4 DELEGATE SCHILTZ: Except section eleven on page fif-
5 teen.

6 CHAIRMAN GRAYBILL: All right. Let's vote on Mr.
7 Schiltz's motion. I take it to be the sense of your motion,
8 Mr. Schiltz as yesterday, that if you find no errors you may
9 then put it on Order of Business Number Five. Is that
10 correct? That's correct.

11 Mrs. Babcock.

12 DELEGATE BABCOCK: Will this make it possible for
13 this all to be opened up again?

14 CHAIRMAN GRAYBILL: It can't be opened up again
15 unless Mr. Schiltz finds an error. So, we'll hope for the
16 best, Mrs. Babcock. All in favor of Mr. Schiltz's motion,
17 say Aye.

18 DELEGATES: Aye.

19 CHAIRMAN GRAYBILL: Opposed.

20 (No response)

21 CHAIRMAN GRAYBILL: So ordered.

22 Mr. Murray.

23 DELEGATE MURRAY: Mr. Chairman. By way of rearrang-
24 ing our calendar, I move that we pass consideration of all
25 other matters before Committee of the Whole until the next

1 sitting of the committee.

2 CHAIRMAN GRAYBILL: What do you mean by that, Mr.
3 Murray?

4 DELEGATE MURRAY: Well, I mean that we have other
5 matters to take up like Bill of Rights, and I'd like to move
6 that we rise and finally report on this part of it. That's
7 the purpose of my motion.

8 CHAIRMAN GRAYBILL: All right. All in favor of Mr.
9 Murray's motion, say Aye.

10 DELEGATES: Aye.

11 CHAIRMAN GRAYBILL: Opposed, No.

12 (No response)

13 DELEGATE MURRAY: Mr. Chairman. I move that the
14 Committee of the Whole rise and finally report.

15 CHAIRMAN GRAYBILL: On the executive article? The
16 motion is to rise and finally report on the executive article
17 of the Style and Drafting Report. All in favor, say Aye.

18 DELEGATES: Aye.

19 CHAIRMAN GRAYBILL: Opposed.

20 (No response)

21 CHAIRMAN GRAYBILL: So ordered.

22 (Tape Changed)

23 PRESIDENT GRAYBILL: Will the clerk please read the
24 report of the Committee of the Whole?

25 CLERK HANSON: March 8, 1972, Mr. President: We,

1 your Committee of the Whole, having had under consideration
2 Report Number Four of the Committee on Style and Drafting,
3 recommend as follows.

4 PRESIDENT GRAYBILL: Mr. Murray.

5 CLERK HANSON: That the committee rise and report.
6 Signed, Graybill.

7 PRESIDENT GRAYBILL: Mr. Murray.

8 DELEGATE MURRAY: Unless there's objection, Mr.
9 President, I move we adopt the Committee of the Whole report.

10 PRESIDENT GRAYBILL: Is there objection to not
11 reading the entire Committee of the Whole report? The motion
12 is to adopt the Committee of the Whole report. All in favor,
13 say Aye.

14 DELEGATES: Aye.

15 PRESIDENT GRAYBILL: Opposed, No.

16 (No response)

17 PRESIDENT GRAYBILL: So ordered.

18 DELEGATE MURRAY: Mr. President. I move that the
19 convention resolve itself into Committee of the Whole for
20 consideration of business under General Orders.

21 PRESIDENT GRAYBILL: The motion is to resolve our-
22 selves back into Committee of the Whole to consider matters
23 under General Orders. All in favor, say Aye.

24 DELEGATES: Aye.

25 PRESIDENT GRAYBILL: Opposed, No.

1 (No response)

2 PRESIDENT GRAYBILL: So ordered. It's the Chair's
3 intention to take up one or two Bill of Rights articles before
4 noon. That's why we're going back into Committee of the Whole.

5 (Committee of the Whole)

6 CHAIRMAN GRAYBILL: Will the clerk please read
7 section twelve of the Bill of Rights article number eight?

8 CLERK HANSON: (Reading) Section twelve, Right to
9 Bear Arms: The right of any person to keep or bear arms in
10 defense of his own home, person, and property, or in aid of
11 the civil power when thereto legally summoned, shall not be
12 called in question, but nothing herein contained shall be
13 held to permit the carrying of concealed weapons. Mr. Chair-
14 man, section twelve.

15 CHAIRMAN GRAYBILL: Mr. Blaylock.

16 DELEGATE BLAYLOCK: Mr. President. I move that when
17 this committee does arise and report after having had under
18 consideration section twelve of proposal eight, it recommend
19 the same be adopted. Mr. President.

20 CHAIRMAN GRAYBILL: Mr. Blaylock.

21 DELEGATE BLAYLOCK: Mr. President. On this partic-
22 ular section, which has had a great deal of discussion, and
23 has been the subject of a great deal of emotional debate
24 throughout our country and here in Montana in past political
25 raees, and insofar as gun registration is concerned, we heard

1 a great many witnesses on this particular section of the Bill
2 of Rights. It was very early decided among the Bill of Rights
3 Committee members, that we would leave this section as is,
4 which is the strongest statement on the right to bear arms of
5 any of the fifty states of the United States. We had many
6 people who are members of the National Rifle Association, the
7 group of the right to keep and bear arms, appear before our
8 committee. When we were holding our hearings in the senate
9 over here, the question was put to each one of these witnesses,
10 are you satisfied with the present section of the right to
11 keep and bear arms. With only one exception, every one of
12 them said yes. They were perfectly happy and would be very
13 pleased if the committee would recommend this. So, we have.
14 So, I would urge this convention to keep the present section
15 twelve, the right to keep and bear arms, which is, as I say,
16 the strongest in the United States. I will rest at this
17 point. Mr. Chairman.

18 CHAIRMAN GRAYBILL: Very well. Mr. Berthelson, you
19 have an amendment. May the Chair have the clerk read the
20 amendment? Will the clerk read Mr. Berthelson's amendment?

21 CLERK HANSON: (Reading) Mr. Chairman. I move to
22 amend section twelve, page six, line twenty of the Bill of
23 Rights Committee proposal by adding the following words after
24 the comma following the word, question, quote, nor shall any
25 person's firearms be registered or licensed comma, end quote.

1 Signed, Berthelson.

2 CHAIRMAN GRAYBILL: Very well. Mr. Berthelson has
3 proposed an amendment has proposed an amendment to section
4 twelve which has the effect of adding on line twenty the
5 phrase, nor shall any person's firearms be registered or li-
6 censed. That's in the middle of the sentence, but it's before
7 the last clause.

8 Mr. Berthelson.

9 DELEGATE BERTHELSON: Mr. President and fellow dele-
10 gates. I rise to speak in favor of the amendment you have
11 just heard read. I should like to commend the Bill of Rights
12 Committee for their work and for the very progressive and
13 forward looking article which they have presented to this body.
14 I would like to thank the Bill of Rights Committee chairman,
15 Mr. Dahood, and vice chairman, Mr. Blaylock, and the other
16 members of that committee for the thoughtful consideration
17 which they gave to my delegate proposal number four. Very
18 sincerely and respectfully, I yield to their judgment that
19 proposal number four was too long. To comply with Rule Twenty
20 of this convention, I will state that I do hold several guns
21 including big game rifles, shot guns for bird hunting and
22 competitive practice and shooting, and I do own four older
23 model Winchesters which someday may become collectors' items.
24 I should also like to tell this convention of delegates that
25 I have three sons, three daughters-in-law, four daughters and

1 four sons-in-law each of whom, I believe to be good law abiding
2 citizens and each of whom owns three or more guns. I have
3 several grandchildren whom I look forward to teaching to use
4 guns. I state that I have been a qualified hunter safety
5 instructor for the state of Montana since the invention of
6 that program. Now, I should also like to state further, that
7 my father owned one or more guns that he could use. My mother
8 owned two guns that she could use. Likewise, my grandparents
9 owned and could use their guns. Now, beyond this generation,
10 I cannot testify with certainty, but I would surmise that one
11 or two more generations back, my ancestors did use and own
12 guns. Now, I'd like to submit to you that we have, today,
13 here in this convention hall, a rare opportunity to write a
14 right to bear arms section that can be a landmark model for
15 other states to follow. I should like each of you to consider
16 carefully with me this statement that I am going to make.
17 Gun registration or licensing is a must before any serious
18 effort toward gun confiscation can be made. Totalitarian
19 powers always want to know what citizens own weapons and whether
20 they may be seized. To be brief, I am going to ask you dele-
21 gates to think with me now about what has happened in these
22 countries, Czechoslovakia, Hungary, Cuba, Ireland. I submit
23 that each of you know what has happened. We have many citizens
24 who believe that it could never happen here, but may I remind
25 you of the millions of believers behind the Iron and Bamboo

1 Curtains. There are those who say yes, but we have the present
2 section in our Bill of Rights and, again, this is true. But,
3 tell me, how much freer would the Czechs, Poles, Cubans, etc.
4 be if we sent them a hundred, a thousand, or even a million
5 copies of our present constitution with its present section
6 on the right to bear arms? Maybe they would be a little
7 warmer as their leaders burned them, but certainly no freer.
8 What is it then that truly differs us from these enslaved
9 peoples throughout the world? Might I suggest that it is not
10 only our desire to remain free but our ability to insure that
11 our rights asserted in the present section will never be over-
12 stepped nor infringed. Fellow delegates, I submit to you that
13 that ability will be tremendously strengthened by adding the
14 nine words, nor shall any person's firearms be registered or
15 licensed. Mr. President and fellow delegates, I thank you.

16 CHAIRMAN GRAYBILL: Mr. Blaylock.

17 DELEGATE BLAYLOCK: Mr. President. I resist the
18 amendment. Since the year 1900 in our country, we have had
19 over seven hundred and seventy thousand people die from non-
20 military gunshot wounds in the United States. We're slaughter-
21 ing each other at the rate of eighteen thousand a year. Last
22 year, we had ninety-three policemen shot down in the United
23 States. Ninety-six percent of the murdered policemen killed
24 by gunfire are killed by pistols. Now, no one under our
25 present Bill of Rights right to bear arms section has lost any

1 arms in the state of Montana. No one proposes to take their
2 arms. The argument that we can never, or never should, regis-
3 ter these guns, I think we have to contemplate very seriously
4 and go into the future. No one knows how the population of
5 the state of Montana may grow. Our cities get larger. Our
6 problems become more complex. We may very well, someday, in
7 our state legislature, want to give that legislature and our
8 constitution the right to register at least pistols. Now, the
9 argument is always given that if we ever register any guns --
10 you know, we do register our automobiles; we register all
11 kinds of things -- but if we ever register guns, then they
12 will know where the guns are and, therefore, they can come and
13 take the guns. I submit that that is a false argument. If
14 you remember -- some of you may have read it -- about five or
15 six weeks ago, there was trouble in Turkey. They thought
16 -- the regime over there thought -- that there might be trouble
17 so they thought they would search the homes in Istanbul. They
18 used the Army and they went through two hundred and sixteen
19 thousand homes in one twenty-four hour period. I submit that
20 the same thing would happen in any Montana city. If they
21 really want to go through our homes -- if we ever had our
22 government go over like that -- they will get the guns, and
23 do you know what they'll do? They'll pass a decree that if
24 anyone is caught with a firearm in their home or on them, they
25 will be shot on sight, and you will not keep your guns. The

1 argument is also used, time and time again, that the Czechs
2 lost their freedom because they didn't have their guns. Again,
3 historically, that simply is not true. Czechoslovakia lost
4 their freedom in 1938, not because they didn't have guns.
5 They had one of the finest little armies in Europe. They
6 were very well supplied with arms. They had tanks and the
7 whole bit, but they lost their freedom to Nazi Germany because
8 their friend, Prime Minister Daladier of France, and their
9 friend, Prime Minister Neville Chamberlain of England sold
10 them out. That's why they lost their freedom, and that's why
11 the freedom has been lost in most of these countries. You
12 will not keep your freedom by having shot guns and rifles in
13 your home. So, if you're going to argue on the basis of keep-
14 ing your freedom, don't use that. You keep your freedom by
15 participating in the democratic political process such as
16 we're doing here, and by always making sure that that's alive.
17 You cannot fight tanks and all the sophisticated weaponry of
18 modern armies with rifles and shot guns. You'll last as long
19 as the proverbial snowball in you know where. It simply won't
20 be done. I just have a couple of clippings here of the kind
21 of things that are happening in the state of Montana all the
22 time. I cut these out of the Billings Gazette. Here it is:
23 Billings man shot in bar. It says, Patrick Holland, 23, 1619
24 Clark Avenue was shot in the head about 10 p.m. Sunday in
25 Archer's beer depot, 1223 Grand Avenue. I won't read the

1 whole thing. This is in another bar in Billings. April 20,
2 1970. A woman was killed and two men wounded in a shooting
3 incident about 1:29 A.M. Sunday in the Standard Bar at 1207
4 Minnesota Avenue. They had been having a party. Evidently
5 somebody got looking at the wrong person and a guy hauled out
6 his gun and shot down three of them. Now, Mr. Berthelson
7 talks about the fact that he owns guns, that his wife owns
8 guns, that his sons own guns and his daughters own guns. The
9 last thing that I would want to do in speaking to this article
10 is to take guns away from the people who legitimately use
11 them. But, I think that we are asking the police officers of
12 this country and of our state, to do quite a bit, when we say
13 we are going to put on the books of the state of Montana, in
14 our constitution, that the legislature can never look at that
15 problem. They can never register these guns or license them.
16 I think the day may come in maybe twenty years when we may
17 very well want to do that very thing to protect our police
18 officers. I resist this amendment.

19 CHAIRMAN GRAYBILL: Mr. Jacobsen.

20 DELEGATE JACOBSEN: Mr. President and fellow dele-
21 gates. Mr. Berthelson has talked about this registration of
22 guns and I wholeheartedly agree with him. I have over fifty
23 letters and names, etc. of people that have written me from
24 all over the state wanting us to put these nine words in our
25 right to bear arms article. One of the letters I have states

1 that this extension of these nine words to our previously
2 guaranteed rights is supported by the Montana Wild Life Feder-
3 ation. It has over ten thousand members. The National Rifle
4 Association has over six thousand members in Montana; Montana
5 Rifle and Pistol Association; Western Montana Fish and Game
6 Association; Montana Gun Collectors Association; Association to
7 Keep and Bear Arms with groups across our state; Flathead Wild
8 Life Incorporated and many other groups, and perhaps a quarter
9 of a million hunters and family people here. I believe that
10 we should put this in our constitution as a safeguard. Den-
11 mark, at the start of the second world war, was taken over
12 because their guns were registered. All the Nazis had to do
13 was go to the clerk of the court and get the list of names
14 under point of a gun, and go to these homes and pick these
15 guns up. The result was the Nazis moved in without a shot
16 fired and, of course, the Danes became pawns of Hitler and
17 his troops. I earnestly hope that you will support putting
18 these nine words in our Bill of Rights right to bear arms
19 article. Thank you.

20 CHAIRMAN GRAYBILL: Mrs. Erdmann.

21 DELEGATE ERDMANN: Mr. President. For some reason
22 that I've never been able to understand, this whole matter of
23 guns is a very emotional matter across the whole state of Mon-
24 tana. I support the Berthelson amendment for the very reason
25 that I couldn't honestly be supporting the voters of Cascade

1 County, who sent me here, if I didn't endorse it. I have had
2 more personal telephone calls, more letters, more petitions,
3 mass media messages from this one group of people in Montana
4 than any others. Actually, I'm sure that if a count were
5 made, it would be just as many people petitioning me for this
6 as the group who petitioned me to vote against the right to
7 work. I do submit that if the future need arises, where we
8 should register our guns, it's a simple matter now. We've
9 made several methods of constitutional amendment in Montana.
10 So, I submit this would be an easy thing when the people of
11 the state of Montana see the need for it. In the meantime, I
12 can't see that these nine or ten words make that much differ-
13 ence. I must say that I don't own any guns but I look at this
14 from a political viewpoint. These gun buffs are very emotional.
15 By inserting these words, you will have not a group threatening
16 you to go to the constitutional ratification election and
17 killing the thing. They will be going there to endorse it, to
18 ratify it. They will get all their friends out to ratify
19 this constitution just to insure this protection which is so
20 dear to their heart. I support the Berthelson amendment.
21 Thank you, Mr. Chairman.

22 CHAIRMAN GRAYBILL: Mrs. Cross.

23 DELEGATE CROSS: Mr. Chairman. It looks like we
24 have two and two here now. I think the business of these words
25 being added, of course, is something fairly recent. Up until

1 about two weeks ago, the question was posed to me time and
2 again, both at home and after I came here, will you support
3 the wording which is in the present constitution? This came
4 from some of the groups that you people have quoted. At that
5 time, I said, yes I would. I think the present constitution
6 section is fine and we should keep it. Then, all of a sudden
7 within the last two weeks, we get all of this tremendous out-
8 pouring of mail asking us to add these words. I think the
9 committee is wise in retaining the present section. I don't
10 think that adding these words is going to add a great deal to
11 the constitution. I feel that we are being pressured in a
12 way here, which I do not consider the kind of pressure I like
13 to get. I think some of the arguments which have been present-
14 ed for these words are not legitimate arguments. I think any-
15 one who reads their history very thoroughly, knows that that's
16 one argument that has been twisted out of context. As far as
17 registering guns is concerned, there are some of us who have
18 done this voluntarily, mainly as a protection for the weapons
19 so that if they're ever taken, they can be traced. I happen
20 to be on the board of a museum in our county that has some
21 very old guns in their collections. I went to the police
22 department about two years ago and asked them about registering
23 the guns. They told me that it was optional, that we could do
24 as we pleased. Knowing what happens sometimes to these gun
25 collections, if they ever were taken or lost, we would never be

1 able to trace them. So, by unanimous vote of that board of
2 trustees, we took the serial numbers of all those guns and
3 our police department has them. Frankly, I can't see the big
4 uproar over these additional words. I think the committee is
5 very wise in wanting to retain the present section and I
6 support them.

7 CHAIRMAN GRAYBILL: Mrs. Mansfield.

8 DELEGATE MANSFIELD: Mr. Chairman. Having these
9 few words in the Bill of Rights would be a very glaring error.
10 I support the majority report of the Bill of Rights. In my
11 family, my children have a great grandmother and a great great
12 grandmother who used a gun to slaughter her chickens and tur-
13 kies. They were both such good shots that they could remove
14 their heads without using the ax. We have many guns in the
15 family that will be passed on to my sons. Today, the men on
16 the ranch carry the guns in the pick-up for the purpose of
17 killing predatory animals. The only danger is that they may
18 be stolen if the pick-ups are unlocked. The neighbor had
19 several guns stolen and they happened to have the numbers reg-
20 istered at home and they were found in California. It was
21 only through this registration that they were able to return
22 them. We have one of the finest sections on the right to bear
23 arms in the United States. I believe it should be retained as
24 is. I support this majority report of the Bill of Rights.
25 Thank you, Mr. Chairman.

1 CHAIRMAN GRAYBILL: Mr. James. I think you were up
2 next.

3 DELEGATE JAMES: Mr. Chairman and fellow delegates.
4 As a member of the Bill of Rights Committee, I will go along
5 and support our report. We thought this over and Chet has
6 given you some of the material on it. We did hear all kinds
7 of people and they were well satisfied with this thing before
8 an organized letter campaign started. Just about all these
9 letters came on the same pink stationery with the exact wording
10 with the exception of one which threatened our constitution
11 if we didn't go along with them. Now, I think that I'd be a
12 hell of a member of the Bill of Rights if I gave in to threats.
13 I think that we've had threats before that this constitution
14 wouldn't be passed if we did something. I think it's time to
15 stand on our feet as men and reject these threats. We think
16 of ourselves as a frontier people, perhaps a frontier state,
17 but let me read to you what the constitution of the frontier
18 state of Alaska has to say. This state, as you know, is just
19 a few miles away from Soviet Russia. A well regulated malitia
20 being necessary to the security of a free state, the right of
21 the people to keep and bear arms shall not be infringed. This
22 is a collective right. Again, let me take the frontier state
23 of Hawaii, which was, in our time, invaded by a foreign power
24 or attacked, I should say, at Pearl Harbor. A well regulated
25 malitia being necessary to the security of a free state, the

1 right of the people to keep and bear arms shall not be in-
2 fringed. Then, we have the constitution of the state of Idaho
3 which is much more restrictive on the right to bear arms. The
4 people have the right to keep and bear arms. The legislature
5 shall regulate and exercise this right by law. This is much
6 more restrictive. I do think we have a good article here. It
7 gives us the right. It's an individual right, not a collective
8 right like Hawaii and Alaska have. If there's any registration
9 in Montana, I'm sure it will come from the federal government,
10 such as one man, one vote has. If the situation arises here,
11 as Delegate Blaylock has said, that there's a need for regis-
12 tration because the crime rate has risen so. This is up to
13 the legislature. We have given you the individual right in
14 the present constitution. We will give it to you in the fu-
15 ture constitution. I think that's about all I have to say.
16 I heartily support our Bill of Rights proposal and will go
17 along with it. Thank you.

18 CHAIRMAN GRAYBILL: Mr. Murray.

19 DELEGATE MURRAY: Mr. Chairman. I'm a member of the
20 Bill of Rights Committee. I have, since the commencement of
21 our work, reserved my personal right to speak on this subject
22 even though I voted for the section as it appears in the pro-
23 posal put out by the Bill of Rights Committee. I don't know
24 that I've ever been personally threatened about this matter
25 or any other, either in or out of the committee. I come from

1 an area which is concerned greatly, apparently from the volume
2 of mail, phone calls and other contacts that I've had about
3 this matter, both here and on each occasion that I've been in
4 the Flathead during this convention. I don't speak on this
5 subject from a philosophical standpoint, although I probably
6 could. I don't speak on the subject from an emotional stand-
7 point, although probably I am somewhat emotionally involved
8 in trying to keep the right to bear arms as we propose it
9 here. I do clearly want to state to you that I am in favor of
10 the Berthelson amendment for one particular reason. That is,
11 the matter of practical politics. I can't think of one single
12 thing that we could add to our constitution that would attract
13 the voters faster than the adoption of this particular amend-
14 ment. I think that it does no harm. I think that it might
15 do great good in the practical sense. I do not wish to mean
16 by these comments that I will not support the committee recom-
17 mendation if this amendment does not pass, but for the reasons
18 given, I support the Berthelson amendment.

19 CHAIRMAN GRAYBILL: The Chair senses that we're not
20 going to get to a final vote on this issue before noon. I
21 see three people up. I wonder if it wouldn't be advisable
22 for us to recess at this time.

23 Mr. Murray.

24 DELEGATE MURRAY: Mr. Chairman. I move the committee
25 recess until the hour of 1:30 o'clock P.M. this day.

1 CHAIRMAN GRAYBILL: Before the Chair puts this
2 motion, the Chair is going to ask to make two announcements.
3 First of all, Style and Drafting will not meet during the
4 lunch hour, but will meet at 8:00 A.M. tomorrow. Secondly,
5 will you please, if you have not, make your reservations for
6 dinner tonight -- five dollar dinner -- at the Colonial Club
7 for you and your guests, if you have not made them with the
8 girls in the secretary's office in Mr. Toole's or my office.

9 Mr. Champoux.

10 DELEGATE CHAMPOUX: May we have the Education Com-
11 mittee to meet very briefly in the committee room right after
12 this adjournment please?

13 CHAIRMAN GRAYBILL: Education Committee briefly after
14 this adjournment. Very well. All in favor of adjourning until
15 1:30 o'clock P.M., say Aye.

16 DELEGATES: Aye.

17 CHAIRMAN GRAYBILL: Opposed, No.

18 (No response)

19 (Recess 11:58 o'clock A.M.)
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1 MONTANA CONSTITUTIONAL CONVENTION

2 FORTIETH DAY

3 Wednesday, March 8, 1972

Convention Hall

4 1:30 o'clock, P.M.

Helena, Montana

5
6 CHAIRMAN GRAYBILL: The committee will be in order.

7 Ladies and gentlemen of the committee, before lunch we were
8 discussing section twelve of the bill of rights article number
9 eight, and we had an amendment offered by Mr. Berthelson. The
10 sense of the amendment is to add, on line twenty, page six, at
11 the end of the line, the words: nor shall any person's fire-
12 arms be registered or licensed. While everyone is getting
13 settled, I might announce again that some of you have requested
14 that we use the pages with the comment, and I certainly don't
15 mind others doing that. It does confuse -- some of us are
16 using one and some the other, and the Chair has tried to use
17 the others but because of the comments, I lose my place, but I'm
18 perfectly happy if the rest of you want to use the other page
19 but that's what I use and I'll try and give other references if
20 I can. Now, we are discussing section twelve and Mr. Berthel-
21 son's amendment which adds the phrase, nor shall any person's
22 firearms be registered. Mrs. Pemberton, you were up before
23 lunch.

24 DELEGATE PEMBERTON: Thank you very much, Mr. Graybill.

25 There was a reference made to mail this morning that was coming

1 in from people you are representing in your counties, and there
2 was page after page of mimeographed letters. I have about twen-
3 ty-five or thirty letters asking that we give consideration to
4 Mr. Berthelson's amendment and all but four of them are person-
5 al letters and that is from District One. Thank you.

6 CHAIRMAN GRAYBILL: Mr. Davis.

7 DELEGATE DAVIS: Mr. President, fellow Delegates, I
8 have been inclined and very desirous of supporting the major-
9 ity position on this issue, but it is a very important issue,
10 apparently, because of all the mail and all of the fixed opin-
11 ions, as noted in the last election and how active these people
12 were and how concerned they are about the guns. I'm not so
13 concerned that the state is going to license and take away
14 their gun. Now, Mr. Berthelson, as a member of the majority,
15 last week had a great deal of confidence in our state govern-
16 ment and gave them the authority to do all the taxation, to
17 move the assessment to the state level, remove the state debt
18 limit on taxation so in effect they could take away your house
19 you had the gun in, and so forth, and so I think that that part
20 isn't too serious about that these same people are going to
21 turn around and make you license your gun and be very -- cause
22 a problem. However, I spent the same time here that most the
23 rest of you, except the officials who I know have spent a lot
24 of additional time and we're very grateful for that, but I
25 want a Constitution that we can support. And, also, as I hope

1 a kind of practical politician. Now, basically, these gun
2 people are aginners. They're going to vote against the Con-
3 stitution if you don't have any article in it; they're going
4 to vote against it if you've just got the same article in it,
5 but they're sure going to be trapped if you put in this amend-
6 ment because if they get this amendment they've got to come
7 out and support the Constitution. Therefore, I'm going to
8 support the amendment.

9 CHAIRMAN GRAYBILL: Mr. Toole.

10 DELEGATE TOOLE: Well, Mr. Chairman, I wonder if --
11 I rise in support of Mr. Berthelson's amendment. I wonder if
12 by eliminating Mr. Berthelson's amendment we are not tacitly
13 violating section ten, the right of privacy, and perhaps one
14 of the committee might address himself to that matter. So far
15 as I'm concerned, the part of the country I come from, this is
16 a people issue. This is not a pressure group issue. And I
17 would be very much interested to know, to have someone comment
18 upon whether or not we are violating section ten by tacitly --
19 by our tacit refusal to include Mr. Berthelson's amendment in
20 section twelve. Thank you, Mr. Chairman.

21 CHAIRMAN GRAYBILL: Mr. Champoux.

22 DELEGATE CHAMPOUX: I would like to speak very brief-
23 ly, sir, concerning this amendment. I want to state to begin
24 with that I am in agreement with the majority proposal but I
25 also favor Mr. Berthelson's amendment. Now, it has been said

1 that registration is not confiscation. If it isn't, then what
2 is it for? If we are going to talk about registration in terms
3 of stopping crimes, I'm sure the case of New York with their
4 gun control registration act can show this sort of thing isn't
5 successful. Secondly, Mr. Blaylock's comments on not being
6 able to stop tanks, planes and so forth with firearms, I think
7 the situation in Viet Nam could give him an argument that op-
8 poses that position. I think the position of this amendment
9 is for protection, as the right to bear arms was originally,
10 and I am in support of the amendment.

11 CHAIRMAN GRAYBILL: Mr. Kamhoot.

12 DELEGATE KAMHOOT: Mr. Chairman, I'm not going to
13 take much time on this. When I came to the Convention, I
14 thought I would be very happy if we could retain the sections
15 we have in our Constitution. Therefore, I think the committee
16 should be commended. However, we have many, many letters and
17 now it has been stated that these are a form letter. That may
18 be true, but these people did put an eight cent stamp on it
19 and they went to the trouble to send it in, so therefore, I
20 know that these people want me to vote for Mr. Berthelson's
21 amendment and I think this is what we should do because there's
22 no sense of going against the will of the people. We have
23 heard many, many times that this is a people's convention.
24 Well, let's listen to the people a little bit, then. And this
25 is certainly an emotional thing and I don't suppose as import-

1 ant as a lot of people think, but I certainly want to support
2 it because if it's what the people want, that's what we're
3 here for. Thank you, Mr. Chairman.

4 CHAIRMAN GRAYBILL: Mr. Johnson.

5 DELEGATE JOHNSON: Well, Mr. Chairman, thank you.
6 I think most of the arguments for this have been said. I'd
7 like to observe that if we register firearms, you're making an
8 outlaw out of everybody that refuses to register them and I
9 know that this would be done, and it would remind me a great
10 deal of the years when bootlegging was in its prime and a crook
11 or a dangerous man that needs a gun in his work is certainly
12 going to have it. He's illegal to start with and any laws
13 against him wouldn't deter him in the least, I'm sure. I sup-
14 port Mr. Berthelson's amendment.

15 CHAIRMAN GRAYBILL: Mr. Dahood.

16 DELEGATE DAHOOD: Mr. Chairman, inasmuch as I have
17 the privilege of serving in the capacity of chairman of the
18 Bill of Rights Committee, I feel that I am compelled to address
19 myself to the issue that is before the Chair. I sincerely sub-
20 mit that the most prominent non-issue that has been presented
21 on Convention floor is this issue. There is no one on the Bill
22 of Rights Committee, nor has there been a suggestion made that
23 firearms in the state of Montana should be registered. I am
24 opposed to the registration of firearms. I think all the mem-
25 bers of our committee at this time are opposed to the registra-

1 tion of firearms. I am not prepared to state, however, with
2 utmost clarity for the future that we may never have a situa-
3 tion where perhaps hand guns, in order to preserve law and
4 order in society, may not fall under some legislative directive
5 that may compel registration. That is something for the future,
6 but for now there isn't anyone on the Bill of Rights Committee
7 that supports any law that would require firearms to be regis-
8 tered. When this matter first came before our committee the
9 concern was that we would amend the present protection and
10 thus interfere with the right of the people of the state of
11 Montana to keep and bear arms. We finally convinced all those
12 who appeared before us that that was not true and there was
13 no intention whatsoever to consider such an idea. And so,
14 then, everyone was satisfied with the present protection. We
15 explained to them, as I explain to you now, the federal Con-
16 stitution, almost two hundred years old, does not give you the
17 right that you have in the state of Montana. The federal Con-
18 stitution, in the second article of the federal bill of rights,
19 provides for a collective right, when the citizens are acting
20 as a militia, to keep and bear arms. And, notwithstanding all
21 of the movement and the argument to the issue generated through-
22 out the country, nobody is suggesting that the federal bill of
23 rights be amended. Let me remind you again that in Montana,
24 the provision that we have had since 1889 and which we have
25 now and which our committee suggests be retained, states as

1 follows: The right of any person to keep or bear arms in de-
2 fense of his own home, person and property shall remain invio-
3 late. The federal Constitution right says this: A well reg-
4 ulated militia being necessary to the security of a free state,
5 the right of the people to keep and bear arms shall not be in-
6 fringed. That has been interpreted by the high courts of the
7 federal judiciary to mean that this is a collective right and
8 not necessarily an individual right. So, in Montana, what do
9 we have now and what is our committee's suggestion that we re-
10 tain? The broadest, most liberal concept with respect to the
11 right to keep and bear arms that exists anywhere in any of the
12 several states of the United States. From the debates that I
13 have listened to, suddenly there's an issue that doesn't exist
14 here. Registration is not an issue. We want to keep our right
15 as it presently exists and there is no contention anywhere for
16 registering firearms in the state of Montana, and I submit to
17 you that I am opposed to registration, my vice chairman is op-
18 posed to registration, the members of the committee are opposed
19 to registration, and let's not give any homage to a prominent
20 non-issue by voting for the amendment because I submit to you
21 we are maintaining the right without any concern that it ever,
22 in the future of the state of Montana, is going to be infringed
23 and as a consequence, I oppose the amendment. I am going to
24 vote against the amendment, and at the same time, I, and the
25 rest of the committee are opposed to registration. Thank you,

1 Mr. Chairman.

2 CHAIRMAN GRAYBILL: Mr. Harrington.

3 DELEGATE HARRINGTON: Mr. Chairman, I rise to oppose
4 the amendment. I feel that to lock this into the Constitution
5 would be a grave mistake by this Convention. I also hope that
6 none of the Delegates will take the 1970 campaign and the vin-
7 dictiveness that was waged in that campaign against Senator
8 Mansfield. We are not registering guns. We are not thinking
9 about registering guns. We have, as Mr. Dahood said, one of
10 the strongest articles in the Constitution against the register-
11 ing of guns, and I feel we should oppose this amendment. Thank
12 you.

13 CHAIRMAN GRAYBILL: Mr. Heliker.

14 DELEGATE HELIKER: Mr. Chairman -- I'm tangled up in
15 my books here. Mr. Chairman, I rise in support of Mr. Berthel-
16 son's amendment. If this is not an issue, then why make an
17 issue of it? As a matter of fact, I think that registration is
18 an issue. The proponents of the majority report have said as
19 much. They said it's not an issue today but it will be an is-
20 sue sometime in the future. I don't think the people of Mon-
21 tana want gun registration now or in the future. Now, I come
22 -- or, I came quite a while back, sixteen, seventeen years ago
23 from the state of Michigan, which is a state that does have
24 hand gun registration, and it results in so much bureaucratic
25 form filling-out nonsense that most gun nuts like me didn't

1 bother to own a hand gun. Who had the hand guns? You know who
2 had the hand guns--those people who had a strong enough use for
3 them to get a registration permit or those who had a criminal
4 use for them and didn't need a registration permit. Now, Mrs.
5 Cross says this issue came up pretty fast. As a matter of
6 fact, it did. It's also true that the public trust issue came
7 up pretty fast. I was for that and I am for Mr. Berthelson's
8 amendment, so how fast it came up is, I think, beside the point.
9 I am for it also because I am a member of the western Montana
10 fish and game association, which is one of the most responsible
11 organizations around, and does not take ill-considered positions
12 on anything, and is firmly in support of Mr. Berthelson's amend-
13 ment. There have been no threats to me from any of my constit-
14 uents. There have been some well reasoned letters. I have
15 responded to them by saying that I am in favor of the proposed
16 amendment, although I do not think it is the most important
17 issue in the world, and I wish they would devote some of their
18 energies to more important issues, and I specified a couple.
19 Now, it has also been said here that if we do get gun registra-
20 tion, particularly hand gun registration, it will come from the
21 federal government, which is certainly true. If it does, so
22 be it. But, let's not let them say to Montana, impose it on
23 it -- on us. And finally, as a matter of closing, I would like
24 to take this opportunity to agree with Mr. Murray, for once.
25 This is a matter of practical politics. I think he's absolutely

1 right. We'll get a lot of votes for the Constitution by this.

2 CHAIRMAN GRAYBILL: Mr. Rollins.

3 DELEGATE ROLLINS: Mr. President, to paraphrase an
4 Alka-Seltzer ad, I can't believe I'm hearing this. I firmly
5 support the majority. I see no threat in their proposal to
6 anyone owning guns. I see no portent of any attempt to regis-
7 ter guns. I say if we act on political expedience, how do we
8 know what's politically expedient? Perhaps it is politically
9 expedient to go along on this. Is it politically expedient,
10 then, to go along on everything on which we get letters? Where
11 is this great flood of letters? I don't see them. I've had
12 quite a few on this but I haven't been flooded in the campaign.
13 I had a few ask about it and they didn't object to keeping what
14 we now have. Those who feel that the opponents of the amend-
15 ment will wreck the Constitution, I think I should point out
16 that if they do wreck this new Constitution, they have exactly
17 the same thing in the present Constitution. What have they
18 gained by their actions? Expediency to me is not a very palat-
19 able word. There was a man by the name of Henry David Thoreau
20 who was thrown in jail because he acted according to his own
21 conscience and his friend, Ralph Waldo Emerson, came to see
22 him and he said, Why, Henry, what are you doing in there? To
23 which Henry replied, Why, Waldo, what are you doing out there?
24 And all the time he was in prison, Henry Thoreau said, I'm
25 the only free man in this city because I'm the only one who is

1 living up to my convictions. He also said, if I am more right
2 than my neighbors I'm a majority of one, and that's the way in
3 which we operate. The argument of political expediency, to me,
4 is not a good one. I support the majority report and oppose
5 Mr. Berthelson's amendment.

6 CHAIRMAN GRAYBILL: Mrs. Mansfield.

7 DELEGATE MANSFIELD: Mr. President, I am just going
8 to say a few words. As you remember the song, Pistol Packin'
9 Mama, this song referred to the people in--the women especially
10 --in Montana and I would not like to see these nine words
11 placed in our Constitution. At our hearings and the letters we
12 first received at the beginning of our hearing were hand writ-
13 ten and we had many people testify to retain what was in the
14 Constitution, and then several did appear that wanted to have
15 these nine words placed in there, and my only question to them
16 was, if we left this section as is, would you vote for the
17 Constitution and they said yes, no argument. The letters con-
18 tinued to come in to still retain this section and all of a
19 sudden, form letters seemed to come, being signed by Mr. and
20 Mrs., and I believe that there is something afoot. I still
21 support the major section. Thank you, Mr. Chairman.

22 CHAIRMAN GRAYBILL: Mr. Rygg.

23 DELEGATE RYGG: Mr. Chairman, I support the Berthel-
24 son amendment. I haven't received any threats but I think I've
25 seen a lot more interest in that than I did anything in Revenue

1 and Finance -- from our county, that is.

2 (Laughter)

3 DELEGATE RYGG: I realize that this is probably legis-
4 lative. I realize that it probably isn't the most important
5 thing. On the other hand, in the last couple of days, it seems
6 to me we've done some other things that are probably legislative
7 and maybe to me they weren't important, but to someone else
8 there is, and I honestly believe that these nine words are
9 very important to a great many people. I don't think they will
10 clutter up the article and I do support the amendment. Thank
11 you, Mr. Chairman.

12 CHAIRMAN GRAYBILL: Mr. Studer.

13 DELEGATE STUDER: Mr. President, I just want to clear
14 up a misstatement that I think Dr. Rollins gave us a few min-
15 utes ago. He said that if these gun people don't want this in
16 the Constitution, they're going to get it back in the old one.
17 If they vote against this new Constitution, they will be getting
18 the same thing back in the old Constitution. But, we're talking
19 about the amendment. It is not in the old Constitution. I
20 just want to correct that. And, I want to bring up another
21 fact that last year a fellow from the western end of the state
22 come over and run against Mansfield. He was the Republican
23 nominee by the name of Wallace. He run on the right to bear
24 arms issue only, practically only, and he had very few other
25 issues. We also had a senator over there that run against

1 Melcher, and to the surprise of most of the people, especially
2 in our district, Wallace picked up more votes than Rehberg and
3 Mr. Rehberg put on a tough race. He worked hard, there was a
4 lot of money spent. There was not a lot of money spent. He
5 didn't have it. Wallace was over there with hardly any support
6 other than the right to work --

7 (Laughter)

8 CHAIRMAN GRAYBILL: I'm sure that was a Freudian
9 slip and not an attempt to get around the Chair.

10 (Laughter)

11 DELEGATE STUDER: O.K., a little commercial doesn't
12 hurt once in a while.

13 (Laughter)

14 DELEGATE STUDER: But anyway he did not have the
15 support of any known organization other than the right to bear
16 arms and when he got that many votes, I would say those people
17 are quite serious about their voting and if we have a chance
18 now, by the addition of these nine words, of getting their
19 votes, I think we ought to do it because I'm quite sure that
20 we will alienate this vote if we don't. I don't think it's
21 very important that we have these nine votes -- nine words in
22 here, but I do think we should have the votes and for that
23 reason I support Mr. Berthelson.

24 CHAIRMAN GRAYBILL: Mr. McNeil.

25 DELEGATE McNEIL: Mr. Chairman, in general I agree

1 with the committee. They have a very good, strong section.
2 However, it will be better with the Berthelson amendment. Del-
3 egate Blaylock referred to some seven hundred thousand people
4 who died from gunshot wounds and an alarming number of police-
5 men in recent history have been shot down. This is an emotion-
6 al issue and I ask that you strongly consider who shot those
7 policemen. Would they comply with a licensing or registration
8 law? Of course not. Delegate Blaylock and Delegate Dahood
9 both referred to some date in the future when we may need licen-
10 sing and registration. This ignores the fact that only honest,
11 law-abiding citizens will comply with licensing and registra-
12 tion. The perfect example of this is New York City; they have
13 had the Sullivan law for years and have as high a crime rate
14 as anywhere in the country. I submit that the net result from
15 licensing and registration would simply be to raise the prem-
16 ium that the Mafia would have to pay for an unregistered gun.
17 To the citizens of Montana, having a constitutional guarantee
18 against licensing and registration is far more important than
19 a constitutional right to know or right to participate or
20 right to privacy. We are talking about the real heart of what
21 is important to Montanans. In addition, I think it would be
22 very nice to have all the gun nuts, and I number myself among
23 them, supporting our Constitution. Delegate Dahood referred
24 to this as a non-issue. I agree. It wouldn't change our Mon-
25 tana law one bit to put this amendment in. It wouldn't change

1 it one bit, but what would it do? It would require that at
2 some time in the future that anyone wants to put licensing
3 and registration as part of the law of Montana, that they would
4 have to do it by a vote of the people by a constitutional amend-
5 ment. I submit that's where it belongs and strongly support
6 the Berthelson amendment.

7 CHAIRMAN GRAYBILL: Mr. Wilson.

8 DELEGATE WILSON: Mr. President, I don't know what I
9 could add to what has already been said here, but --

10 (Laughter)

11 CHAIRMAN GRAYBILL: Mr. Wilson, is that an invitation
12 to stop, or --

13 (Laughter)

14 DELEGATE WILSON: I hope that you don't interpret it
15 that way, Mr. President.

16 (Laughter)

17 CHAIRMAN GRAYBILL: O.K.

18 DELEGATE WILSON: But, I have many letters and tele-
19 grams in my desk and drawer. In fact, it's practically full
20 of them. And they represent people from my district, a lot of
21 them, and if I remain silent on this issue they would certainly
22 question why I did so. I support Mr. Berthelson's amendment.
23 I think that this thing does have a lot of meaning. It has a
24 lot of meaning to these people who wrote these letters. There
25 is not one of these letters in my desk that says that they will

1 not support the Constitution if you do not put this in. They
2 are merely expressing a wish that you will do this. They want
3 it done. They want this additional protection that would come
4 from having it written into the Constitution. As my good friend
5 across the aisle has said, it will require then that the people
6 take a vote on this if they want their guns registered, and
7 this in effect is what these people that sent these letters to
8 us are asking. They're asking this consideration of this body.
9 Thank you, Mr. President.

10 CHAIRMAN GRAYBILL: Mr. Jacobsen.

11 DELEGATE JACOBSEN: Mr. President, fellow Delegates.
12 There is one thing to be added to this argument why these nine
13 words should not be put into our right to bear arms article.
14 There is a movement on foot nationally to register all guns in
15 the United States. Now, when our national constitution was
16 written, the states were given all rights not prohibited by this
17 national constitution. Now, if this movement to register arms
18 comes even close to being an amendment in the national bill of
19 rights, our already having same in our Constitution would pre-
20 vent for a time, anyway, the registration of firearms in the
21 United States. Now, if we put this amendment in our article,
22 I am sure that other states will follow suit and copy this, the
23 thing we are doing here. We need this in the Constitution and
24 now.

25 CHAIRMAN GRAYBILL: Mr. Conover.

1 DELEGATE CONOVER: Mr. Chairman, would Mr. Dahood
2 yield to a question?

3 CHAIRMAN GRAYBILL: Mr. Dahood?

4 DELEGATE DAHOOD: Mr. Chairman, I yield.

5 DELEGATE CONOVER: Mr. Dahood, after hearing all
6 these different comments for and against, to me, actually, I
7 can't see where it would do the -- hurt the article or the sec-
8 tion one bit, but I'm going to ask you one question. Isn't it
9 true today that if you buy a gun, even in the state of Montana,
10 that you have to fill out three or four different forms and
11 it's registered within the store in which you buy it.

12 DELEGATE DAHOOD: I think that's probably correct,
13 Mr. Conover.

14 DELEGATE CONOVER: Mr. Chairman, would Mr. Dahood
15 yield to another question?

16 CHAIRMAN GRAYBILL: Mr. Dahood.

17 DELEGATE DAHOOD: I yield, Mr. Chairman.

18 DELEGATE CONOVER: Well, in that event, if we put
19 this in the Constitution, these nine words, if the federal gov-
20 ernment at any time requests that all guns be registered, does
21 that override any state?

22 DELEGATE DAHOOD: Mr. Conover, I wish I could answer
23 it yes or no. I cannot, but I will try and answer your ques-
24 tion. I think there would be a serious question as to what
25 type of traffic we are talking about with respect to firearms.

1 If it's solely a matter within the state of Montana, I would
2 not think that the federal area would have jurisdiction. On
3 the other hand, they could contend that the manufacturer of
4 firearms is within the stream of interstate commerce and as a
5 consequence would have jurisdiction in that fashion. With re-
6 spect to registration, I should think that that is not a con-
7 sideration that quite has the validity that some of the Dele-
8 gates may think it has simply because I think that if someone
9 wanted to have a list of the firearms that exist, that wouldn't
10 be too much trouble. I should think that the National Rifle
11 Association has a subscription list for their magazine that is
12 probably long and extensive. I would imagine that anyone on
13 that subscription list probably has a firearm, but in answer
14 to your question, I think it would depend on various circum-
15 stances as to whether or not a federal registration act would
16 apply to Montana. It would depend on the circumstances I have
17 indicated.

18 DELEGATE CONOVER: Thank you, Mr. Dahood.

19 Mr. Chairman.

20 CHAIRMAN GRAYBILL: Mr. Conover.

21 DELEGATE CONOVER: Well, in listening to all your
22 arguments, I must say that I am one of them, too, probably,
23 because I am a great lover of guns. It must come down to one
24 point. It's going to take money out of your pocket if you
25 have to register them. And how much it will mean to each of

1 these individuals, I wouldn't know. Maybe a hundred dollars,
2 two hundred dollars, five hundred dollars, so I think this is
3 -- I think this is the purpose that you want to add these nine
4 words. I think let's be honest about it.

5 CHAIRMAN GRAYBILL: Mr. Romney.

6 DELEGATE ROMNEY: Mr. Chairman, I want to read this
7 proposed section to which the amendment is to be appended:
8 Right to Bear Arms. The right of any person to keep or bear
9 arms in defense of his own home, person, and property, or in
10 aid of the civil power when thereto legally summoned, shall not
11 be called in question, but nothing herein contained shall be
12 held to permit the carrying of concealed weapons. That is the
13 background for this amendment which reads, nor shall any per-
14 son's firearms be registered or licensed. We all know that we
15 have a backstop for this right to bear arms in the federal
16 Constitution. There is no suggestion of registration or licen-
17 sing in the committee's proposal. None whatsoever. It is a
18 fear which has been engendered in the people of Montana's minds
19 over the past several years, and it is widespread. It is so
20 widespread that a person who opposes it might as well paint a
21 big target on his back and run for the mountains and find a
22 hole, and run in the hole and pull the hole in after him. If
23 he wants to avoid it, he'd better paint himself sky blue and
24 run along the horizon so nobody can find him. Or, we can have
25 a situation where we have such concern for our budding Consti-

1 tution, it becomes so sacrosanct that we must embrace it -- or,
2 embrace this amendment whether we like it or not, whether it
3 is pertinent or not, and I suggest it is not pertinent. Now,
4 I think this is a matter that is legislative in scope. I don't
5 think it is constitutional law. I'm not in favor of putting
6 it into the Constitution. If I were a legislator, I would not
7 be in favor of putting it into the statutes of the state of
8 Montana because I don't believe in registration of guns. I
9 have guns, several of them. I've used them all my life. But
10 there are some other considerations, too. All of the mail that
11 I have received almost entirely being -- on this subject --
12 almost all being entirely mimeographed form or material of that
13 type -- has been insisting that this be placed in the Constitu-
14 tion. I don't think that there -- I have received more than
15 forty, fifty such missives, but they have all been the same.
16 Nobody has suggested that we do not keep it in the Constitution
17 -- place this in the Constitution as an amendment. The people
18 who are in favor of placing this in the Constitution as an
19 amendment to the majority report are very much agitated about
20 it and they are working tooth and toenail. The people who are
21 against it are complaisant. They take no part of it. They
22 figure we'll all do our duty as we see it. Now, from my re-
23 marks I'm quite certain that you realize that I am not in favor
24 of putting this amendment in the Constitution. However, in
25 November of 1970, the people of Ravalli county took a plebiscite

1 on me on this very question and they retired me from the legis-
2 lature because of this situation. Now, I am placed in the dia-
3 bolical situation of whether I should support my conscience or
4 my constituents.

5 (Laughter)

6 DELEGATE ROMNEY: It is a hell of a predicament.

7 (Laughter)

8 CHAIRMAN GRAYBILL: Mr. Schiltz.

9 DELEGATE SCHILTZ: I think the name of the game here
10 right now, and I'm not sure I have all that much to add, is
11 that everybody get on the record on this subject, and I'm going
12 to get on the record on this subject. I have watched and lis-
13 tened to and looked at almost every kind of weapon you could
14 name, from three-tenths of a millimeter up to a hundred and
15 fifty five millimeter. I'm about half deaf in my left ear
16 from standing next to that lanyard on that big one, and I
17 suspect, although I don't claim to be more expert than anybody,
18 I doubt that there's anybody in this room that knows more about
19 guns than I know. I can take them apart in the dark, and I
20 have. I can find first position, second position and third
21 position stoppages and go immediately to the source. And with
22 all that knowledge, I hate them. They make noise. There's
23 only one thing you can do with them and that's shoot them, and
24 there's only one thing you can do when you shoot them and that's
25 hurt somebody or some thing. I have an intense hate of the

1 things, but I will say this. I don't own one, my grandfather
2 didn't own one, my father didn't own one, and my kids don't
3 own one, and that's possibly because of my influence. But, if
4 I did own one, I would have no hesitancy in going downtown and
5 registering the damned thing.

6 (Laughter and applause)

7 CHAIRMAN GRAYBILL: Please don't demonstrate. We
8 laugh but we don't demonstrate.

9 (Laughter)

10 CHAIRMAN GRAYBILL: O.K., I think Mr. Blaylock was
11 up next, Mr. Artz.

12 DELEGATE BLAYLOCK: Mr. President, just a few remarks
13 to maybe clarify some of the points that have been made by the
14 supporters of the amendment. First of all, on this matter of
15 the state of New York, I have heard that quoted to me an awful
16 lot, so I finally wrote to the police commissioner of the city
17 of New York to ask him what he felt about the gun control law
18 in that city, and I received a report from the deputy commis-
19 sioner of licenses, a man by the name of Lewis Stutsman, and
20 he says this: (Reading) Your communication concerning gun
21 control has been referred to the undersigned for reply. The
22 provisions of the penal law of the state of New York regulating
23 the possession of firearms is an essential factor in our fight
24 against crime. Our experience has revealed that in most in-
25 stances firearms used in the commission of crimes in this state

1 originally were purchased in some other jurisdiction and there-
2 after illegally transported to this state. It is our belief
3 that if there were more rigid controls in other states of the
4 possession and sale of firearms that the crime situation would
5 be improved. (End reading) Now, I would also like to show the
6 delegation this telegram--five hundred names on it from Billings,
7 Montana, to the Bill of Rights Committee. This was addressed
8 to Chairman Wade Dahood. It's from such people as the Nation-
9 al Rifle Association, the National Association to Keep and
10 Bear Arms. This is when we were holding hearings on this.
11 They were all asking that we leave this part of our Constitu-
12 tion just as it is. It was only afterwards, like about two
13 weeks ago, like Mrs. Cross said, that we began to get all of
14 this lobbying to change this section. Also, in regard to this
15 business of threats. This was addressed to Mrs. Cross and she
16 just passed it to me. This is at the bottom. It says: (Read-
17 ing) P.S. As a Delegate it would be readily apparent with no
18 change in section thirteen, why should we support a new Con-
19 stitution? (End reading) I count that as a threat. We are
20 going to go against it if you don't do what we want. Also, in
21 regard to -- there was a remark made insofar as the country of
22 Denmark by somebody in here and it was because the Nazis knew
23 where the guns were that they overran Denmark in World War II.
24 Denmark lasted exactly four hours and it wasn't because they
25 knew where the shotguns were. I would like to reiterate that

1 we have one of the very strongest statements on the right to
2 keep and bear arms of any state in the Union. I think that to
3 add this language does make a change. I think we are tying the
4 hands of future state legislatures when this problem may become
5 more severe some time in the future. And we have -- I've heard
6 this said over and over again in this chamber by this body --
7 we'll leave things to the state legislature. All right, this
8 is a problem that may some day have to be taken up by them and
9 I think we should leave it to them in case that they do want
10 to do this. Now, insofar as the argument that has been made,
11 and I shall close with this, about the business we're going to
12 pick up votes for this Constitution, if we'll just put this in.
13 Now, I heard when we organized this Constitutional Convention
14 back in November, there were a lot of good idealists in here
15 and there were a lot of things being said about the dirty old
16 politicians who have been over here in the state legislature.
17 I never did join in that thing, but those were the statements
18 that were made, and that we didn't want caucuses and we didn't
19 want this and we wanted to be open and let's not act like pol-
20 iticians. All right, we're here as a Constitutional Conven-
21 tion and we are writing a Constitution for maybe the next
22 eighty years. Now, are we going to bow to some pressure to
23 change this when maybe in our heart we really don't believe it?
24 Now, if you really dont -- if you really do believe that these
25 words don't make any difference and if we put this in that they

1 can never be registered or any licensing, and you think that's
2 the right thing, go ahead and vote for it. But, if you don't
3 believe that way then I suggest that you do not act like the
4 proverbial politicians and vote just because of pressure. Vote
5 what you really think is right -- not on whether this thing is
6 going to be adopted, whether we're going to pick up some sup-
7 port -- because I would like to point out that while Mike Mans-
8 field did have some trouble in the last election, he did win
9 and he still won big. There's a silent majority here that's
10 never been heard from, and I think we have the strongest sec-
11 tion of any state. Let's leave it alone.

12 CHAIRMAN GRAYBILL: Mr. Artz is next.

13 DELEGATE ARTZ: Mr. Chairman, fellow Delegates, a
14 few comments only. Number one, the registration will not nec-
15 essarily stop the criminal element. They will merely steal
16 their guns and not register them. You are just going to create
17 a hardship on honest people. I agree with Delegate Erdmann.
18 I have had the same pressure from Cascade county. I would
19 certainly appreciate it if you would support Delegate Berthel-
20 son's amendment because I would hate to take a risk of being
21 shot at when I go back to Cascade county. I would also like
22 to eliminate a chance -- or to provide a chance for getting more
23 votes for this Constitution. Maybe I am a dirty old politi-
24 cian, but I'd hate to work over here as hard as I have and with
25 the elimination of nine words, lose the Constitution. I main-

tain that if Alaska and Hawaii don't like gun registration, that's fine. The people of Montana like it, they should have it. I have also heard quite a few comments around here about whether it's constitutional or legislative. Well, I found this out. If you're for something, it's constitutional; and if you're against it, it's legislative. Now, technically all of the Revenue and Finance was legislative material. Nine more words certainly should be allowed, considering the number of legislative words we've put into this Constitution up to this point. A point has been made that there was a sudden avalanche of these communications about this. I think possibly it could have been an editorial in the March-April 1972 issue of the Handloader magazine that probably give these people a hope that we could accomplish something if we got it in the Montana Constitution. Now, in the comments some of the reasons for not putting this in were stated as follows: The committee notes that the statutory efforts to regulate the possession of firearms have been at the federal level and are, therefore, not subject to state constitutional provisions. In this Handloader's magazine for March-April 1972, the editorial, and I'm not going to read all of it, just a little, says, (quote) A significant U. S. supreme court decision, one which could have a far reaching effect upon present and future federal firearms laws and could preclude a federal gun registration or licensing program was handed down shortly before the close of the 1971

1 session. The decision struck down the section of the gun con-
2 trol act of 1968 which prohibits convicted felons from possess-
3 ing firearms, one of the few items in the gun control act of
4 '68 which most sportsmen favored. The case in which the sup-
5 reme court made its decision involved one Dennis Bass of Bronx,
6 New York, who had been convicted on two charges of possessing
7 firearms after having been previously convicted of a felony.
8 The key words were this. This is the crux of the matter. If
9 the supreme court will not allow congress to write laws pro-
10 hibiting criminal ownership of firearms, unless those firearms
11 are directly involved in interstate commerce -- I quote, inter-
12 state commerce -- then it follows that congress may not write
13 laws denying firearms ownership to anyone. All of the pro-
14 posed federal gun registration and/or licensing laws would
15 prohibit anyone's owning a gun without having met the federal
16 requirements. Yet, the supreme court's Bass decision says that
17 congress may not take such a prohibition unless the gun is in-
18 volved in interstate commerce, and without the authority to
19 prohibit unregistered or unlicensed possession of a firearm,
20 congress can't write a registration or a licensing law, un-
21 quote. Therefore it is up to the states and I maintain that
22 Montana should put these nine words in and I heartily support
23 Delegate Berthelson's amendment. Thank you.

24 CHAIRMAN GRAYBILL: Mr. Harbaugh is next.

25 DELEGATE HARBAUGH: Mr. Chairman, once there was a

1 fellow who had a dog. It was a particular kind of a dog, a
2 very wonderful dog. He could run like the wind. This dog had
3 a tremendous nose; he could trail almost anything. He was a
4 great fighter but he had one weakness. He was afraid of rab-
5 bits. He was what you'd call a scared rabbit dog. I don't
6 think I'd want to own a scared rabbit dog. I don't think the
7 people of Montana want a scared rabbit convention. It seems
8 to me this is what the issue is when we are talking about put-
9 ting frosting on the cake. I think that we ought to get on
10 with the business of this Convention. I wouldn't change my
11 mind on this issue in spite of all of the conversation that's
12 taken place here. My mind was made up on this issue before we
13 began. I wouldn't change my mind if all the people in Montana
14 were out here beating on the Capitol door. I say let's vote
15 this amendment down. Let's get on with the business of this
16 Convention.

17 CHAIRMAN GRAYBILL: Mr. Rollins, I think you were
18 next.

19 DELEGATE ROLLINS: We've heard about these nine lit-
20 tle words. Here are nine words. Came from a poem -- Just
21 for a handful of silver he sold us. This poem was a nasty,
22 mean, unwarranted poem aimed at one of our great men, Daniel
23 Webster, because he spoke his conscience in the seventh of
24 March speech in 1850. Mr. Romney said he was in a hell of a
25 predicament. The predicament that I fear is that if I don't

1 vote my conscience, and with my ugly mug, I can't stand to
2 shave more than one face in a day. I don't worry so much about
3 what the people may say. They perhaps exercised poor judgment
4 in electing me, but I've had a number of them say, now that
5 you're elected, go there and write the Constitution. And, in
6 order to do that you have to use your own judgment. You have
7 to use your own convictions. And that's what I hope to do. I
8 feel those nine little words -- oh, they don't mean so much,
9 but there was another song--Three Little Words, eight little
10 letters--I love you. Man, what a trap that's been.

11 (Laughter)

12 DELEGATE ROLLINS: Words have meant things and those
13 words mean something. The majority report without those words
14 is a very strong protection to those who want to have the right
15 to bear arms. I'm like Mr. Schiltz. I don't own a gun; would-
16 n't have one. I have known personally five people who have
17 been killed in gun accidents. I'm afraid of the things but I
18 don't chastise those who love guns, and I think perhaps I can
19 understand it. I'm that way with books. But, I feel that
20 going those extra nine words is not necessary. You have a very
21 strong article the way it is. I hope that the people will sup-
22 port it. Beyond that, all I can do is vote the way I feel,
23 which is in favor of the majority report.

24 CHAIRMAN GRAYBILL: Mr. Gysler, you were next.

25 DELEGATE GYSLER: Mr. Chairman, I rise to support

1 the Berthelson amendment. I sat in this chamber on the day the
2 Bill of Rights Committee had their public hearing and I am not
3 going to condemn the committee at all for limiting the number
4 -- the time the people had to speak on this, but I do know that
5 there were -- it was after this time when there was considerable
6 opposition to leaving this section as it is that the organized
7 stuff started coming. On that day I was lobbied by -- to add
8 something to this by the father of Lones Wigger, Jr., who, in
9 the Olympics in Japan, I believe in 1964, was a gold medal
10 winner in rifle competition. I can't quite see some of the
11 arguments. They say, well, now, this isn't going to happen.
12 Do you know anybody that's going to be doing this? And then
13 I just checked three fast ones. Do you know anybody around
14 that says we shouldn't have freedom of religion in the state
15 of Montana? But we have a section five passed that way. Do
16 you know anybody, any organized thing going on that would pre-
17 vent us from having free and open elections? We have a sec-
18 tion, a proposed section thirteen that way. Can you imagine
19 someone in this country at this time in the history of our
20 country to be deprived of life, liberty and property without
21 due process of law? I can't see where any of these things
22 would happen in this country of ours but yet we still maintain
23 these things in the bill of rights. I think the addition of
24 these few words just strengthens the article a little and this
25 is one of those places where I think if -- because this has

1 been historically the position that the people of the state of
2 Montana have thought of with the section that we have now that
3 also they can't register them, I think that by -- guns -- I
4 think that by adding these words in there and putting down in
5 black and white what most of the people have always thought
6 would be there, and then if somebody in some foreseen future
7 -- unforeseen future date may want to register them, then it
8 goes back to the people and the people can decide. Thank you.

9 CHAIRMAN GRAYBILL: Mr. Habedank.

10 DELEGATE HABEDANK: Mr. President, I will be brief.
11 I agree with Mr. Toole; I agree with Mr. Gysler. I have re-
12 ceived threats. I feel the majority proposal is good. The
13 Berthelson amendment is better and I will vote for it, not
14 because of the threats but in spite of it.

15 CHAIRMAN GRAYBILL: Mrs. Bates.

16 DELEGATE BATES: Mr. Chairman, my conscience doesn't
17 tell me to go one way or the other on this, and I'm not like
18 Romney that I have a feeling for my constituents because I
19 have some pro and con. I feel this is a statutory matter and
20 that the federal government will preempt if they decide at
21 some time to do so. I also have some strong family ties of
22 shooting relatives who are strong gun clubbers and therefore
23 I will abstain from voting on this amendment. Thank you.

24 CHAIRMAN GRAYBILL: Mr. Harlow.

25 DELEGATE HARLOW: I know I am looked upon with dis-

1 gust because I rise up at this particular time, but I've lis-
2 tened to all of these arguments and I am reminded of one state-
3 ment made in our history which said, millions for defense but
4 not one cent for tribute. And it looks as though this Conven-
5 tion is now subject to tribute. And where can any of you folks
6 who are so concerned about these nine words being so essential
7 does it say anywhere in the Constitution or any place else that
8 you will be deprived of your guns? The gentleman who is so
9 proud and I am proud to of his relation who is a gold medal
10 winner with the Olympics. I'm always proud of anybody who
11 achieves success in whatever effort they take, but there is
12 nothing in here that is going to take a gun away from that man.
13 Nothing in here that's going to take the guns away from any
14 of you, and as my seat mate here so ably put it, if we haven't
15 got the gumption, the guts, to stand up for what we think is
16 right, for what we came here for -- now, when you came here,
17 when you ran for election, was there a single one of you who
18 got up and said, I'm going to put something in the Constitu-
19 tion to make it impossible to register a gun. All of you said
20 or agreed to that you would put back in the Constitution what
21 was already there, and this fear that you have -- World War I
22 we had to register our guns and we all had them when the war
23 was over, and we are writing a Constitution here that's supposed
24 to show to the people of Montana that we have some degree of
25 decision on our own part. I am sure that there are more people

1 in Montana who don't own guns than there are who do own guns
2 and I realize that all of you have been lobbied. Some of you
3 have fell prey to that lobby and have got up here and stood on
4 the floor and said, I weakened, I couldn't stand up under the
5 pressure, I'm afraid to go home, I haven't got any backbone to
6 me so I'm going to vote for these nine little words that merely
7 show that we haven't got the guts to be a good Delegate and
8 stand up under our own convictions and our own thinking. I
9 know those are strong words, but that's the way I feel.

10 CHAIRMAN GRAYBILL: Now, fellow Delegates, I have two
11 more amendments on section twelve here, but I never see the
12 people who sponsored them stand up, so you can stay down if you
13 don't want to amend yet or you can stand up if you do.

14 Mrs. Babcock.

15 DELEGATE BABCOCK: Mr. Chairman, I fail to see how,
16 in one breath, we can ask the citizens of Montana to partici-
17 pate in our government and at the same time, when they write
18 to us and say they want us to do something, that that's a
19 threat. Therefore, I'm going to vote for the nine words. Thank
20 you.

21 CHAIRMAN GRAYBILL: Mr. Campbell.

22 DELEGATE CAMPBELL: I think probably most people's
23 minds are already made up and we probably should go for the
24 vote on it. I would like to just mention one thing concerning
25 the telegram so there can be no question later about intentions

1 on the Bill of Rights Committee or that telegram. Originally
2 there was a rumor around the state of Montana that the Bill of
3 Rights Committee actively wanted to register guns. As a re-
4 sult of that rumor the telegram from Billings came to our com-
5 mittee, asking us not to change the wording in the present
6 provision. They did not realize that not only was there not
7 a movement to register guns, there was a suggestion from Del-
8 egate Berthelson to prohibit the registration of guns. Del-
9 egate Berthelson's proposal number four would have completely
10 removed section thirteen and replaced it with new language
11 which some gun people had told me would eliminate the right
12 completely. I always felt that that proposal, if adopted,
13 would allow some groups to go out and say the right would be
14 eliminated if it was adopted and the present one was gone.
15 Now, I really believe that the people that sent that telegram
16 were not inconsistent when they feel today that they accept
17 his amendment to the present provision. I think also that I
18 have talked to the people and I have complete understanding
19 with the people in our area that in no way can the Montana
20 constitutional provision interfere in any manner with the
21 federal law now in effect and it may be in effect in the fu-
22 ture. They seem to understand that completely. We seem to
23 categorize some of them as extremists but I have a great deal
24 of mail--I have it from doctors, professional people, who are
25 also avid sportsmen, hunters, who also have recreational use.

1 I'm a member of the skeet-trap club. You don't always shoot a
2 gun to kill; you can always shoot skeet and trap, which I en-
3 joy very much, as well as hunting. I really feel that the
4 people would feel more secure with this. I think if it came
5 to a vote to them they'd adopt it. I'm not threatened by it
6 because the federal standards will control anyway, but on the
7 telegram, I think that should be understood so later they can't
8 say that this telegram was used to misrepresent their views.
9 Thank you, Mr. Chairman.

10 CHAIRMAN GRAYBILL: Mr. Siderius.

11 DELEGATE SIDERIUS: Mr. Chairman, just for a point
12 of clarification, would someone explain to me what -- after
13 the word, summoned -- shall not be called in question -- will
14 someone explain to me what that means?

15 CHAIRMAN GRAYBILL: Since no one stands, Mr. Sider-
16 ius, the Chair believes that that's language, possibly out of
17 the national Constitution, and it has been, I think, used be-
18 fore to indicate shall not be abridged or stopped. I think it's
19 out of the national Constitution where it serves the same pur-
20 pose. Is that right, Mr. Dahood? Do you know?

21 DELEGATE DAHOOD: That's right. That merely means
22 the right shall remain inviolate and shall not be questioned
23 by any person in a position of authority.

24 CHAIRMAN GRAYBILL: Mr. Skari.

25 DELEGATE SKARI: Mr. Chairman, I, too, have resisted

1 these nine words. I think, like a lot of the Delegates, I
2 have tried to be a purist at this Convention and no legislation.
3 But, I suppose that I have supported provisions that a lot of
4 people would consider legislation. Maybe I've crossed that line
5 between Delegate and politician but I suspect maybe that's not
6 such a clear and definite line. I think that perhaps the de-
7 cisions are not quite that clear. I think, though, that people
8 are tired of bureaucracy, they are tired of red tape, and they
9 are tired of the paper-shuffling. I can see that these nine
10 words can cause no harm; therefore, I support the Berthelson
11 amendment.

12 CHAIRMAN GRAYBILL: Mr. Foster.

13 DELEGATE FOSTER: Mr. Chairman, fellow Delegates, I
14 would just like to rise in support of the committee majority
15 position. Those of you who had your minds made up before you
16 came to this debate, this will in no way affect you, but those
17 of you who realize the dilemma we are up against in this par-
18 ticular problem, I give you full confidence that the committee
19 deliberated carefully on this question. We listened to both
20 sides carefully and I feel in the calmness of reasonable men,
21 we came to a legitimate and fair conclusion. And, I request
22 that any of you who are in doubt in any way to rely upon the
23 committee who has worked diligently on this question. I cer-
24 tainly want to go on record opposed to gun registration, but
25 at the same time I strongly support the position of the major-

1 ity in this particular matter and feel that the provision we
2 have in this section for the Constitution is the best provis-
3 ion, and I oppose the Berthelson amendment. Thank you, Mr.
4 Chairman.

5 CHAIRMAN GRAYBILL: Mr. Kamhoot.

6 DELEGATE KAMHOOT: Mr. Chairman, would Mr. Foster
7 yield to a question?

8 CHAIRMAN GRAYBILL: Mr. Foster?

9 DELEGATE FOSTER: Yes, sir, Mr. Chairman, gladly.

10 DELEGATE KAMHOOT: Don, was this amendment ever pre-
11 sented to you as a committee -- these nine words in that or-
12 der?

13 DELEGATE FOSTER: Yes, they were.

14 DELEGATE KAMHOOT: And you discarded them?

15 DELEGATE FOSTER: I would enlarge upon that a little
16 bit. We felt that the Constitution was not the place to, in
17 a sense, remove any possibility of any provision ever being
18 enacted in the future if the legislature felt it was necessary
19 and at the same time we felt that we had a very strong section
20 and we didn't feel it was desirable to have these words in the
21 Constitution.

22 DELEGATE KAMHOOT: Thank you. Mr. Chairman, would
23 Mr. Campbell yield to a question?

24 CHAIRMAN GRAYBILL: Mr. Campbell?

25 DELEGATE CAMPBELL: I will yield, Mr. Chairman.

1 DELEGATE KAMHOOT: Bob, I will put the same question
2 to you. Was the presentation of these nine words in that or-
3 der put to you in your committee?

4 DELEGATE CAMPBELL: Our delegate proposal was number
5 four. That was the proposal that was supported by some people
6 at the time. That proposal was considered and rejected. We
7 came out at the Romney hearings with the present section that
8 we have. That is the one we have solidified in the final re-
9 port. At no time, to my knowledge, did the committee official-
10 ly receive and consider seriously changing and adopting to
11 these specific words. This is a later amendment. It did come
12 in late, I will admit. It was not presented early in the Con-
13 vention. Delegate proposal number four was the only change
14 that we considered and we decided not to go with it.

15 DELEGATE KAMHOOT: Thank you, Mr. Campbell. Mr.
16 Chairman, I would like to submit to the body here at this time,
17 I think this is nothing more than a chauvinistic effort on the
18 part of this committee to protect what they've come out with
19 and they've come out with a pretty good bill of rights, but
20 I still think this is mainly the reason they are standing so
21 tight on it. I don't think that they are worried that these
22 nine words are going to ruin anything and I would certainly be
23 afraid if they are worried that these nine words may upset
24 something in the future for Montana. Thank you, Mr. Chairman.

25 CHAIRMAN GRAYBILL: Very well, the issue arises on

1 Mr. Berthelson's amendment. Mr. Berthelson would add to line
2 twenty on page six of section twelve the words: nor shall any
3 person's firearms be registered or licensed. Do you want to
4 close?

5 DELEGATE BERTHELSON: Mr. President, I'd like to
6 close.

7 CHAIRMAN GRAYBILL: Very well, you may close.

8 DELEGATE BERTHELSON: Thank you, Mr. President. Fel-
9 low Delegates, I feel a little bit like David of old must have
10 felt when he went out to meet the giant armed only with a sling-
11 shot. I stand here, armed with my slingshot of no formal ed-
12 ucation. The only formal education I have I received in the
13 university of hard knocks. I respect Mr. Dahood for his very,
14 very eloquent training. I respect Mr. Chet Blaylock for his
15 education and all of the experience that he has had as a poli-
16 tician. But, I am going to attempt to clear up some things
17 very briefly now that seem to be in question. There is no
18 inconsistencies in what has been done. Early in this commit-
19 tee's deliberations there was a rumor circulated throughout
20 this state that there was to be introduced a proposal to re-
21 quire the registration of firearms. It was in response to that
22 rumor that this telegram that lays on this man's desk came. It
23 was in response to that rumor that many, many, many of the let-
24 ters came to the Delegates to this Convention. And now since
25 this amendment containing nine words has been presented to this

1 Convention -- and I say it was never presented to the committee
2 when they were in their deliberations. The gun owners and the
3 gun enthusiasts and the sportsmen of Montana are now supporting
4 this amendment. I am real glad that Mr. Blaylock fervently
5 and passionately referred to the accidents that guns cause.
6 He read some statistics for you and I'd like to read those
7 same statistics from the same sheets that Mr. Blaylock used.
8 Mr. Blaylock was right when he read that a hundred and four-
9 teen lives were lost last year in accidents of all types.
10 Leading the grim parade was fifty-four thousand eight hundred
11 fatalities caused by motor vehicles; seventeen thousand five
12 hundred deaths due to falls; and seven thousand three hundred
13 from drowning. Fire burns and so forth caused sixty-seven
14 hundred deaths; poisoning, forty-six hundred; and suffocation
15 thirty-four hundred. What he didn't read was that firearm
16 accidents took two thousand three hundred lives. Based on
17 total population, firearms accidents accounted for one death
18 each ninety thousand people in this country. I am going to
19 hurry along. Mr. Blaylock and Mr. Dahood both talked about
20 the problems of violence and crime. Now, registration of guns
21 is no solution to the problem. It isn't effective. Criminals
22 don't register guns. Registration simply cannot and will not
23 prevent or reduce violence. Registration usually creates more
24 problems than it solves. I want to say just a word about the
25 economic value of guns and their use in this state. I would

1 call your attention, if you will think with me, that firearms
2 have an important social economic impact in the field of con-
3 servation and natural resources management. I call your atten-
4 tion -- and I don't have to go into any figures as to how much
5 money, economically, the use of firearms brings into this
6 state. But, as important as that, is the fact that the use of
7 firearms for lawful use in recreational activities aids our
8 economic, sociological and political forces, supporting the
9 conservation and wild use of our natural resources -- and
10 wise use of our natural resources. Sportsmen cannot be ex-
11 pected to jeopardize the existence of their sport or these
12 very vital economic, sociological and political forces support-
13 ing the conservation and wise use of our natural resources by
14 allowing registration of firearms. I want to read, in closing,
15 three testimonials. Hubert H. Humphrey, former vice president
16 of the United States, had this to say and I quote: The right
17 of the citizen to bear arms is just one more guarantee against
18 arbitrary government, one more safeguard against tyranny which
19 now appears remote in America but which historically has
20 proved to be always possible. End of quote. This is a clip-
21 ping from a Fullerton, California News Tribune article by Billy
22 Graham, and Billy Graham said, and I quote: Back to your
23 question about the gun control law stopping killings in the
24 United States, in the final analysis, a gun cannot harm anyone
25 unless there is a human being to pull the trigger. Ten million

1 guns would be harmless unless some human became stimulated by
2 hate, greed or prejudice. End of quote. And Paul Harvey, the
3 dynamic news commentator, who makes page one understandable
4 and page three exciting, stated on one of his regular radio
5 programs, quote: If the government of the people cannot trust
6 the citizens with a gun, then the citizens cannot trust the
7 government. Fellow Delegates, gun registration is foreign and
8 repugnant to our Montana heritage and tradition. Registration
9 or licensing must be prevented. A registered gun is easily
10 confiscated. To allow that guns would ever be registered or
11 licensed would be an irreversible step if we took that step
12 today. Fellow Delegates, let us insure that the things I have
13 talked about will never happen here by voting for this amend-
14 ment. Thank you.

15 CHAIRMAN GRAYBILL: Very well, the issue is on Mr.
16 Berthelson's amendment to add the words, nor shall any person's
17 firearms be registered or licensed. I take it you want a roll
18 call vote. All those in favor of his amendment, vote Aye; all
19 those opposed, vote No. Has every Delegate voted?

20 (No response)

21 CHAIRMAN GRAYBILL: Does any Delegate wish to change
22 his vote?

23 (No response)

24 CHAIRMAN GRAYBILL: Take the vote, please, Mr.
25 Clerk.

1	Aasheim	-	Nay	Choate	-	Aye
2	Anderson, J.	-	Aye	Conover	-	Aye
3	Anderson, O.	-	Nay	Cross	-	Nay
4	Arbanas	-	Nay	Dahood	-	Nay
5	Arness	-	Nay	Davis	-	Aye
6	Aronow	-	Aye	Delaney	-	Aye
7	Artz	-	Aye	Driscoll	-	Nay
8	Ask	-	Aye	Drum	-	Aye
9	Babcock	-	Aye	Eck	-	Nay
10	Barnard	-	Nay	Erdmann	-	Aye
11	Bates	-	Absent	Eskildsen	-	Excused
12	Belcher	-	Aye	Etchart	-	Nay
13	Berg	-	Nay	Felt	-	Nay
14	Berthelson	-	Aye	Foster	-	Nay
15	Blaylock	-	Nay	Furlong	-	Nay
16	Blend	-	Aye	Garlington	-	Aye
17	Bowman	-	Absent	Gysler	-	Aye
18	Brazier	-	Nay	Habedank	-	Aye
19	Brown	-	Nay	Hanson, R. S.	-	Aye
20	Bugbee	-	Nay	Hanson, R.	-	Nay
21	Burkhardt	-	Nay	Harbaugh	-	Nay
22	Cain	-	Aye	Harlow	-	Nay
23	Campbell	-	Aye	Harper	-	Nay
24	Cate	-	Nay	Harrington	-	Nay
25	Champoux	-	Aye	Heliker	-	Aye

1	Holland	-	Aye	Reichert	-	Nay
2	Jacobsen	-	Aye	Robinson	-	Aye
3	James	-	Nay	Roeder	-	Nay
4	Johnson	-	Aye	Rollins	-	Nay
5	Joyce	-	Nay	Romney	-	Nay
6	Kamhoot	-	Aye	Rygg	-	Aye
7	Kelleher	-	Nay	Scanlin	-	Nay
8	Leuthold	-	Absent	Schiltz	-	Nay
9	Loendorf	-	Nay	Siderius	-	Nay
10	Lorello	-	Aye	Simon	-	Nay
11	Mahoney	-	Aye	Skari	-	Aye
12	Mansfield	-	Nay	Sparks	-	Nay
13	Martin	-	Nay	Speer	-	Nay
14	McCarvel	-	Nay	Studer	-	Aye
15	McDonough	-	Nay	Sullivan	-	Nay
16	McKeon	-	Nay	Swanberg	-	Aye
17	McNeil	-	Aye	Toole	-	Aye
18	Melvin	-	Nay	Van Buskirk	-	Aye
19	Monroe	-	Nay	Vermillion	-	Nay
20	Murray	-	Aye	Wagner	-	Nay
21	Noble	-	Aye	Ward	-	Aye
22	Nutting	-	Absent	Warden	-	Nay
23	Payne	-	Nay	Wilson	-	Aye
24	Pemberton	-	Aye	Woodmansey	-	Aye
25	Rebal	-	Aye	Mr. Chairman	-	Nay

1 CLERK SMITH: Mr. Chairman, forty-three have voted
2 Aye, fifty-two have voted No.

3 CHAIRMAN GRAYBILL: Fifty-two having voted No, forty-
4 three Aye, Mr. Berthelson's amendment is defeated. We are dis-
5 cussing section twelve, the right to bear arms. Are there
6 other amendments?

7 (No response)

8 CHAIRMAN GRAYBILL: I take it then that I can pass
9 the other two amendments sent up to the Chair? Mr. Campbell,
10 do you want to pass?

11 DELEGATE CAMPBELL: I would like to have you read
12 that amendment I sent up, please.

13 CHAIRMAN GRAYBILL: Very well, the Clerk may read
14 Mr. Campbell's amendment.

15 CLERK HANSON: (Reading) Mr. Chairman, I move to
16 amend section twelve, Bill of Rights Committee proposal, on
17 page six, lines seventeen through twenty-two, by adding the
18 following words: The right of any person to keep or bear arms
19 in defense of his own home, person and property -- and insert-
20 ing, or recreational use, comma, and further reading: or in
21 aid of the civil power when thereto legally summoned, shall
22 not be called in question, but nothing herein contained shall
23 be held to permit the carrying of concealed weapons. Signed,
24 Campbell.

25 CHAIRMAN GRAYBILL: Very well, Mr. Campbell has pro-

1 posed an amendment that would add on line nineteen after the
2 word, property, the word, or residential use -- the sense of
3 the amendment being to say that the right of a person to keep
4 or bear arms for residential use.

5 CLERK HANSON: Recreational.

6 CHAIRMAN GRAYBILL: Recreational -- recreational use,
7 pardon me -- for recreational use shall not be called in ques-
8 tion.

9 Mr. Campbell.

10 DELEGATE CAMPBELL: I won't dwell on this. There
11 was a legitimate concern as much as registration and licens-
12 ing over preservation of hunting -- or, preservation of guns,
13 not only for the defense of your home or property but also for
14 legitimate recreational use. I don't know how wide scale the
15 national movement is that some people are concerned about,
16 considering the banning of hunting as being cruel to animals
17 and should be eliminated. The western Montana fish and game
18 department from our area has recommended to protect the people
19 of Montana from their legislatures in the future that this
20 provision be placed in the Constitution. I won't mention our
21 sister state to the east, since it has been mentioned so many
22 times, but I might add that they also did include this in their
23 right to keep and bear arms section at this time. I don't
24 know that required discussion is necessary on this and I think
25 it could be put to a vote. Thank you.

1 CHAIRMAN GRAYBILL: Mr. Blaylock.

2 DELEGATE BLAYLOCK: Mr. President, I resist the
3 amendment. This is the same kind of reasoning that was used
4 on the previous amendment. We are putting up arguments about
5 things that have not come to pass and will not come to pass.
6 This doesn't add anything. We still -- this section as it is
7 is the broadest, strongest, right to bear arms section of any
8 state in the Union and I resist the amendment. Let's leave it
9 alone and put it in as the majority report of the committee
10 stands.

11 CHAIRMAN GRAYBILL: Is there further discussion?

12 (No response)

13 CHAIRMAN GRAYBILL: If not, the issue is on Mr.
14 Campbell's motion to amend section twelve by adding the words,
15 or recreational use, on line nineteen after the word, property.
16 So many as shall be in favor of Mr. Campbell's amendment to
17 add, or recreational use, please say Aye.

18 DELEGATES: Aye.

19 CHAIRMAN GRAYBILL: Opposed, No.

20 DELEGATES: No. Division.

21 CHAIRMAN GRAYBILL: All right, we'll use the voting
22 machines. So many as are in favor, vote Aye, and so many as
23 are opposed, vote No. Has every Delegate voted?

24 (No response)

25 CHAIRMAN GRAYBILL: Any Delegate want to change?

1 (No response)

2 CHAIRMAN GRAYBILL: Forty-nine having voted No, thir-
3 ty-three Aye, the motion is defeated. Is there other discus-
4 sion of section twelve?

5 (No response)

6 CHAIRMAN GRAYBILL: Members of the committee, you
7 have before you for your consideration, when this committee
8 does arise and report after having had under consideration
9 section twelve of the bill of rights that this committee re-
10 commend the same be adopted. So many as shall be in favor of
11 that motion, say Aye.

12 DELEGATES: Aye.

13 DELEGATES (UNIDENTIFIED): Roll call.

14 CHAIRMAN GRAYBILL: You want a roll call on section
15 twelve?

16 DELEGATES (UNIDENTIFIED): Yes.

17 CHAIRMAN GRAYBILL: All right, we'll have a roll call
18 on section twelve. So many as are in favor of the motion,
19 vote Aye on the voting machine and so many as are opposed, vote
20 No. Have all the Delegates voted?

21 (No response)

22 CHAIRMAN GRAYBILL: Any Delegate want to change his
23 vote?

24 (No response)

25 CHAIRMAN GRAYBILL: Please take the vote.

1	Aasheim	-	Aye	Choate	-	Aye
2	Anderson, J.	-	Aye	Conover	-	Aye
3	Anderson, O.	-	Aye	Cross	-	Aye
4	Arbanas	-	Aye	Dahodd	-	Aye
5	Arness	-	Aye	Davis	-	Aye
6	Aronow	-	Absent	Delaney	-	Aye
7	Artz	-	Nay	Driscoll	-	Aye
8	Ask	-	Absent	Drum	-	Absent
9	Babcock	-	Aye	Eck	-	Aye
10	Barnard	-	Aye	Erdmann	-	Nay
11	Bates	-	Aye	Eskildsen	-	Excused
12	Belcher	-	Aye	Etchart	-	Aye
13	Berg	-	Aye	Felt	-	Aye
14	Berthelson	-	Nay	Foster	-	Aye
15	Blaylock	-	Aye	Furlong	-	Aye
16	Blend	-	Absent	Garlington	-	Aye
17	Bowman	-	Aye	Gysler	-	Nay
18	Brazier	-	Absent	Habedank	-	Nay
19	Brown	-	Aye	Hanson, R. S.	-	Aye
20	Bugbee	-	Absent	Hanson, R.	-	Aye
21	Burkhardt	-	Absent	Harbaugh	-	Aye
22	Cain	-	Aye	Harlow	-	Aye
23	Campbell	-	Aye	Harper	-	Aye
24	Cate	-	Aye	Harrington	-	Aye
25	Champoux	-	Aye	Heliker	-	Aye

1	Holland	-	Absent	Reichert	-	Aye
2	Jacobsen	-	Absent	Robinson	-	Aye
3	James	-	Aye	Roeder	-	Aye
4	Johnson	-	Aye	Rollins	-	Aye
5	Joyce	-	Aye	Romney	-	Aye
6	Kamhoot	-	Aye	Rygg	-	Aye
7	Kelleher	-	Absent	Scanlin	-	Aye
8	Leuthold	-	Absent	Schiltz	-	Aye
9	Loendorf	-	Aye	Siderius	-	Aye
10	Lorello	-	Absent	Simon	-	Aye
11	Mahoney	-	Absent	Skari	-	Aye
12	Mansfield	-	Aye	Sparks	-	Aye
13	Martin	-	Aye	Speer	-	Aye
14	McCarvel	-	Aye	Studer	-	Aye
15	McDonough	-	Aye	Sullivan	-	Aye
16	McKeon	-	Aye	Swanberg	-	Aye
17	McNeil	-	Aye	Toole	-	Aye
18	Melvin	-	Aye	Van Buskirk	-	Aye
19	Monroe	-	Aye	Vermillion	-	Aye
20	Murray	-	Aye	Wagner	-	Absent
21	Noble	-	Absent	Ward	-	Nay
22	Nutting	-	Absent	Warden	-	Aye
23	Payne	-	Aye	Wilson	-	Absent
24	Pemberton	-	Aye	Woodmansey	-	Aye
25	Rebal	-	Aye	Mr. Chairman	-	Aye

1 CLERK HANSON: Mr. Chairman, seventy-six Delegates
2 voting Aye, six voting No.

3 CHAIRMAN GRAYBILL: Seventy-six having voted Aye and
4 six voting No, section twelve is adopted. Will the Clerk read
5 section thirteen?

6 CLERK HANSON: (Reading) Section Thirteen, Right to
7 Suffrage: All elections shall be free and open, and no power,
8 civil or military, shall at any time interfere to prevent the
9 free exercise of the right of suffrage. (End reading) Mr.
10 Chairman, section thirteen.

11 CHAIRMAN GRAYBILL: Mrs. Sullivan.

12 DELEGATE SULLIVAN: Mr. Chairman, I move that when
13 this committee does rise and report, after having had under
14 consideration section thirteen of proposal number eight, it
15 recommends that the same be adopted.

16 Mr. Chairman.

17 CHAIRMAN GRAYBILL: Mrs. Sullivan.

18 DELEGATE SULLIVAN: The committee felt that this
19 section should be left just as it is, a guarantee that the
20 right of suffrage shall not be interfered with and that elec-
21 tions shall be free and open. Accordingly, the provision as
22 proposed is the verbatim wording of article three, section
23 five, of the present Montana Constitution. The provision is
24 supplemented, but not replaced by, the proposals of the Gen-
25 eral Government Committee on suffrage and elections. No del-

1 delegate proposals were received on this provision. Thank heaven.

2 (Laughter)

3 CHAIRMAN GRAYBILL: All right, is there discussion on
4 section thirteen on the right to suffrage?

5 (No response)

6 CHAIRMAN GRAYBILL: Members of the committee, you
7 have before you section thirteen and you have Mrs. Sullivan's
8 motion that when this committee does rise and report, after
9 having had it under consideration, that we recommend it do --
10 it be adopted. All in favor of adopting section thirteen, say
11 Aye.

12 DELEGATES: Aye.

13 CHAIRMAN GRAYBILL: Opposed, No.

14 DELEGATES: (No audible response)

15 CHAIRMAN GRAYBILL: It's adopted. Will the Clerk
16 read fourteen?

17 CLERK HANSON: (Reading) Section Fourteen, Adult
18 Rights: Persons eighteen years of age are declared to be
19 adults for all purposes and shall have the right to hold pub-
20 lic office in the state. (End reading) Mr. Chairman, section
21 fourteen.

22 CHAIRMAN GRAYBILL: Section fourteen, Mr. Campbell.
23 Your books should be amended on page six by striking the word,
24 any. Is that right, Mr. Campbell?

25 DELEGATE CAMPBELL: That is correct, Mr. Chairman.

1 CHAIRMAN GRAYBILL: On line twenty-nine, the com-
2 mittee wishes this report to be made with the word, any, be-
3 fore public office stricken, so it reads: the right to hold
4 public office in the state. Where would that reference be on
5 the other page? Strike the word, any. It's on page twenty-
6 seven, line twenty-five.

7 Mr. Campbell.

8 DELEGATE CAMPBELL: Mr. Chairman, I move that when
9 this committee does rise and report, after having had under
10 consideration section fourteen of proposal number eight, that
11 it recommends the same be adopted as amended.

12 CHAIRMAN GRAYBILL: Mr. Campbell.

13 DELEGATE CAMPBELL: The amendment made, of course,
14 was to drop the word, any, from the provision which would, of
15 course, otherwise be in conflict with our decision on two pre-
16 vious occasions on the executive article. It is with great
17 hesitancy, of course, that I watch this happen because I think
18 all of us in our lifetime will see either a constitutional
19 amendment to our Constitution to eliminate this or a United
20 States constitutional amendment which will bring Montana in
21 line with the rest of the nation. I would just like to quote
22 one thing that hadn't been brought up, and I hesitated to bring
23 it up before, and that, of course, was the position of labor
24 on this particular issue. In many other issues, of course, it
25 has been said they had an economic interest but on this one, I

1 would just like to quote you what they did say: In a democra-
2 tic form of government there should be only one kind of citizen-
3 ship. To say that an eighteen-year-old possesses the necessary
4 capabilities to vote, yet is not eligible for public office
5 because of his age, does violence to the concept of equal
6 citizenship. Any person of legal voting age, provided that he
7 or she has the necessary non-age qualifications as the office
8 may require, is fully entitled to seek public office, with
9 their candidacy to succeed or fail according to the judgment
10 of their peers at the polling place. We of Montana AFL-CIO
11 are proud to point out that our organization was for many years
12 in the forefront of the long fight to secure the vote for cit-
13 izens eighteen years and older. I would just like to close by
14 saying that what the present section fourteen does is simply
15 acknowledge and welcome in, less enthusiastically than I would
16 have liked, the new citizens who have been accepted by our
17 nation as responsible citizens and eligible to vote and cer-
18 tainly eligible for office, except for the higher offices in
19 the executive article. This was the decision on two previous
20 occasions and if Jeanette Rankin can't change her mind, nobody
21 can, and I would move that it be adopted as presented. Thank
22 you.

23 CHAIRMAN GRAYBILL: Mr. Garlington.

24 DELEGATE GARLINGTON: Mr. Chairman, I feel there is
25 a technical conflict here between the broad right to hold pub-

1 lic office, as stated in section fourteen, and the provisions
2 in the executive article on professional qualifications for
3 the attorney general, and the provisions in the judicial art-
4 icle as qualifications for judge of the district court and
5 justice of the supreme court, and I therefore have proposed a
6 short amendment to be added on to this which would be in the
7 nature of an exception for those instances where professional
8 qualifications are required. I move that the section fourteen
9 be amended by adding that exception for professional qualifi-
10 cations, which you have the only copy of.

11 CHAIRMAN GRAYBILL: The Clerk will please read Mr.
12 Garlington's proposal.

13 CLERK HANSON: (Reading) Mr. Chairman, I move to
14 amend section fourteen by adding the following at the end.
15 (Quote) except those for which professional qualifications are
16 required, period, end quote. Signed, Garlington.

17 CHAIRMAN GRAYBILL: Mr. Campbell -- no, Mr. Garling-
18 ton. Mr. Garlington's amendment adds the phrase, except for
19 professional qualifications -- except for those which -- except
20 those for which professional qualifications are retired -- are
21 required, at the end of section fourteen. Do you want to dis-
22 cuss it further?

23 DELEGATE GARLINGTON: I think it's self-evident, Mr.
24 Chairman. I just feel that the provision of section fourteen
25 here has no qualification on right to hold public office and

1 since the offices of the judicial branch and of the attorney
2 general are public offices, we should reconcile the difference
3 in order to avoid conflict or confusion between the two.

4 CHAIRMAN GRAYBILL: Mr. Campbell.

5 DELEGATE CAMPBELL: May I ask -- would Delegate Gar-
6 lington yield to a question, please?

7 DELEGATE GARLINGTON: He will.

8 DELEGATE CAMPBELL: Delegate Garlington, would you
9 have any objection to the addition on the end of your amend-
10 ment, any professional qualification as provided in this
11 Constitution?

12 DELEGATE GARLINGTON: Not at all because I think
13 that's the place where the problem arises.

14 DELEGATE CAMPBELL: Thank you. I would like to amend
15 it to add qualification as found in this Constitution, and with
16 that amendment, I would certainly approve it and I think the
17 Bill of Rights Committee would approve it. This has always
18 been our intention that professional qualifications, such as a
19 law degree for a county attorney or a judge, certainly are
20 necessary and I certainly, with that amendment, would have no
21 opposition.

22 CHAIRMAN GRAYBILL: Now, do I understand that you
23 are making another substitute, or additional amendment to Mr.
24 Garlington's, Mr. Campbell? Are you amending his language to
25 say, except those for which professional qualifications are

1 found in this Constitution? Is that what you said?

2 DELEGATE CAMPBELL: Are provided in this Constitu-
3 tion.

4 CHAIRMAN GRAYBILL: All right, the situation is that
5 we have Mr. Campbell's amendment which adds, provided for --
6 provided in this Constitution, which takes the place of the
7 word, required, in Mr. Garlington's amendment, so that if Mr.
8 Campbell's motion prevails it would say: except those for
9 which professional qualifications are provided in this Con-
10 stitution. If Mr. Garlington's prevailed -- Mr. Garlington,
11 do you care whether it says one way or the other?

12 DELEGATE GARLINGTON: No, your honor. We've just
13 been discussing --

14 CHAIRMAN GRAYBILL: Wait a minute now --

15 (Laughter)

16 CHAIRMAN GRAYBILL: I can't say I don't like it, but
17 it just isn't accurate.

18 (Laughter)

19 DELEGATE GARLINGTON: -- or, Mr. Chairman, we've
20 just been discussing here that perhaps we have not adequately
21 taken care of the conflict that might exist with respect to the
22 twenty-five year old qualification for some of the executive
23 offices. It may be that the amendment is slightly inept in
24 this respect.

25 CHAIRMAN GRAYBILL: I wonder if the Chair might sug-

1 gest -- Mr. Artz has an amendment up here that says: except as
2 provided otherwise in this Constitution. Now, that would seem
3 to me to cover all the problems, the twenty-five year olds,
4 plus the judges, plus the attorney general.

5 DELEGATE GARLINGTON: I would be glad to withdraw my
6 amendment in favor of that one.

7 CHAIRMAN GRAYBILL: Would you and Mr. Campbell both
8 withdraw?

9 DELEGATE CAMPBELL: Yes.

10 CHAIRMAN GRAYBILL: Mr. Artz, you're on.

11 DELEGATE ARTZ: Let's vote.

12 CHAIRMAN GRAYBILL: Mr. Artz would make an amendment
13 that would say: except as provided otherwise in this Consti-
14 tution. He would add that language at the end of adult rights
15 for the purpose of picking up the three groups we have talked
16 about. Do you care to discuss it further, Mr. Artz?

17 DELEGATE ARTZ: (Indicating the negative)

18 CHAIRMAN GRAYBILL: Mr. Brown.

19 DELEGATE BROWN: Mr. President, I'm going to make a
20 substitute motion that section fourteen be deleted.

21 Mr. Chairman.

22 CHAIRMAN GRAYBILL: All right, wait until I do my
23 book work here. Very well, the situation now is that Mr. Camp-
24 bell and Mr. Garlington have withdrawn their amendments to
25 section thirteen. Mr. Artz has made an amendment that says:

1 except as otherwise provided in this Constitution, and Mr.
2 Brown has made a substitute motion that we delete section thir-
3 teen -- section fourteen it is -- in its entirety.

4 Mr. Brown.

5 DELEGATE BROWN: Mr. Chairman, I feel that this sec-
6 tion is in direct conflict with the section we put in on suf-
7 frage and elections. Now, if you allow them to hold public
8 office with the amendments that they have put in, that would
9 allow a felon to hold office, subject to his parole. Then we
10 put in suffrage, subject to additional qualifications provided
11 by the legislature, such as county attorneys, county health
12 officers, et cetera, and we completely covered that. And now
13 we are putting in a conflicting section under the bill of
14 rights. I'd have no objections to declare that eighteen-year-
15 olds are adults but don't get into this public office thing
16 because we've already covered it.

17 CHAIRMAN GRAYBILL: Mr. McDonough.

18 DELEGATE McDONOUGH: Mr. President, I agree with Mr.
19 Brown. There's no definition as to what a public office is
20 and they have now limited it to a public officer. Anybody
21 could serve as a public officer who meets the guidelines set
22 out by this Constitution and there could very well be legisla-
23 tive officers set up who could be classified as public officers
24 that would have to have more qualifications than what's set
25 forth in this Constitution. Especially those officers who are

1 classified as public officers who are appointed. I certainly
2 agree that Mr. Brown -- with Mr. Brown that this section should
3 be deleted before it ties up the legislature so it couldn't
4 set any qualifications for any type of public office.

5 CHAIRMAN GRAYBILL: Mr. Habedank.

6 DELEGATE HABEDANK: Mr. President, I resist Mr.
7 Brown's motion. I'd like to have the Constitution shortened
8 and we have covered some things, but I think the portion of
9 this section -- persons eighteen years of age are declared to
10 be adults for all purposes -- should remain in the bill of
11 rights and by deleting the whole thing, we would not have it
12 in there.

13 CHAIRMAN GRAYBILL: Mr. Brown.

14 DELEGATE BROWN: Mr. Chairman, I believe Mr. Habe-
15 dank is right and if I could, I would amend my motion to put
16 a period after all purposes and then delete the rest, and I
17 think it would satisfy everybody. I hope.

18 CHAIRMAN GRAYBILL: Mr. Brown, I'm going to let you
19 withdraw -- Mr. Brown, you're going to withdraw and make a new
20 motion deleting only up to the word, purposes -- after the
21 word, purposes? Is that right?

22 DELEGATE BROWN: Yes, sir, and then delete the re-
23 mainder of that section.

24 CHAIRMAN GRAYBILL: You mean line twenty-nine and
25 thirty?

1 DELEGATE BROWN: Correct.

2 CHAIRMAN GRAYBILL: All right, for the body, the
3 sense of the situation now is that Mr. Brown has deleted only
4 the last half of that section. He has deleted lines twenty-
5 nine and thirty on page six so that the section now reads:
6 Persons eighteen years of age are declared to be adults for
7 all purposes.

8 Mr. Campbell.

9 DELEGATE CAMPBELL: Mr. Chairman, I would support
10 Mr. Brown and I appreciate his removing of his motion to de-
11 lete. I think there should be some reference here. I think
12 that we can accept the young people and I think they will be
13 satisfied with this. I think we can be proud of it, and I
14 would simply like to close.

15 CHAIRMAN GRAYBILL: Is there other discussion of
16 Mr. Brown's proposal?

17 Mrs. Babcock.

18 DELEGATE BABCOCK: May I just ask a question? Mr.
19 Brown, I did receive some correspondence about people who are
20 on welfare; that if this is left in they would lose part of
21 their payments. Do you know if that's correct, or if we should
22 consider that, or if it's important?

23 DELEGATE BROWN: Do you mean the suffrage and elec-
24 tions article or this article?

25 DELEGATE BABCOCK: No, women who have children who

1 are eighteen years old can still receive benefits because they
2 are not considered adults.

3 DELEGATE BROWN: Well, I believe they are adults
4 under our statutory law now -- or nineteen -- and I know social
5 security you can get benefits for an eighteen-year-old or over
6 attending college. I don't think it would present any problem.

7 CHAIRMAN GRAYBILL: Very well, the issue is on Mr.
8 Brown's motion to delete the last half of section fourteen so
9 it reads: Adult Rights. Persons eighteen years of age are
10 declared to be adults for all purposes, period. Do you want
11 a roll call on that?

12 DELEGATES: (Indicating the affirmative)

13 CHAIRMAN GRAYBILL: So many as shall be in favor
14 vote Aye on the voting machine; so many as shall be opposed,
15 vote No. Has every Delegate voted?

16 (No response)

17 CHAIRMAN GRAYBILL: Does any Delegate wish to change
18 his vote?

19 (No response)

20 CHAIRMAN GRAYBILL: Take the vote, please.

21 Aasheim	-	Absent	Aronow	-	Aye
22 Anderson, J.	-	Aye	Artz	-	Aye
23 Anderson, O.	-	Aye	Ask	-	Aye
24 Arbanas	-	Aye	Babcock	-	Aye
25 Arness	-	Absent	Barnard	-	Aye

1	Bates	-	Aye	Eskildsen	-	Excused
2	Belcher	-	Aye	Etchart	-	Absent
3	Berg	-	Aye	Felt	-	Aye
4	Berthelson	-	Aye	Foster	-	Aye
5	Blaylock	-	Aye	Furlong	-	Absent
6	Blend	-	Aye	Garlington	-	Aye
7	Bowman	-	Aye	Gysler	-	Absent
8	Brazier	-	Aye	Habedank	-	Aye
9	Brown	-	Aye	Hanson, R. S.	-	Aye
10	Bugbee	-	Aye	Hanson, R.	-	Aye
11	Burkhardt	-	Aye	Harbaugh	-	Aye
12	Cain	-	Aye	Harlow	-	Aye
13	Campbell	-	Aye	Harper	-	Aye
14	Cate	-	Aye	Harrington	-	Nay
15	Champoux	-	Aye	Heliker	-	Aye
16	Choate	-	Aye	Holland	-	Absent
17	Conover	-	Absent	Jacobsen	-	Aye
18	Cross	-	Aye	James	-	Aye
19	Cahood	-	Aye	Johnson	-	Aye
20	Davis	-	Absent	Joyce	-	Aye
21	Delaney	-	Aye	Kamhoot	-	Aye
22	Driscoll	-	Absent	Kelleher	-	Nay
23	Drum	-	Absent	Leuthold	-	Aye
24	Eck	-	Aye	Loendorf	-	Aye
25	Erdmann	-	Aye	Lorello	-	Aye

1	Mahoney	-	Absent	Rygg	-	Aye
2	Mansfield	-	Aye	Scanlin	-	Aye
3	Martin	-	Aye	Schiltz	-	Absent
4	McCarvel	-	Aye	Siderius	-	Aye
5	McDonough	-	Aye	Simon	-	Aye
6	McKeon	-	Aye	Skari	-	Aye
7	McNeil	-	Absent	Sparks	-	Aye
8	Melvin	-	Aye	Speer	-	Aye
9	Monroe	-	Aye	Studer	-	Aye
10	Murray	-	Aye'	Sullivan	-	Aye
11	Noble	-	Aye	Swanberg	-	Absent
12	Nutting	-	Aye	Toole	-	Aye
13	Payne	-	Aye	Van Buskirk	-	Aye
14	Pemberton	-	Aye	Vermillion	-	Aye
15	Rebal	-	Aye	Wagner	-	Aye
16	Reichert	-	Aye	Ward	-	Aye
17	Robinson	-	Aye	Warden	-	Absent
18	Roeder	-	Aye	Wilson	-	Aye
19	Rollins	-	Aye	Woodmansey	-	Aye
20	Romney	-	Aye	Mr. Chairman	-	Aye

21 CHAIRMAN GRAYBILL: Mr. Harrington.

22 DELEGATE HARRINGTON: I would like to change my vote.

23 I made a mistake.

24 (Laughter)

25 CHAIRMAN GRAYBILL: Mr. Harrington. Go ahead and

1 announce the vote.

2 CLERK HANSON: Mr. Chairman, eighty-two Delegates
3 voting Aye, two voting No.

4 CHAIRMAN GRAYBILL: Now, Mr. Harrington, after I
5 push that button you can't change it, but you may stand and
6 explain it to the journal.

7 DELEGATE HARRINGTON: Well, to be truthful, I thought
8 we were voting on the amendment and I was voting against the
9 amendment on this, so it's my fault.

10 CHAIRMAN GRAYBILL: Your point is you voted wrong
11 and you wish you had voted the other way?

12 DELEGATE HARRINGTON: Yes.

13 CHAIRMAN GRAYBILL: Very well, the record may show
14 Mr. Harrington wishes he voted the other way.

15 (Laughter)

16 CHAIRMAN GRAYBILL: Eighty-two having voted Aye, two
17 having voted No, the motion carries and the last half of sec-
18 tion fourteen is deleted. Are there other -- that wipes out
19 your amendment, Mr. Artz, it seems to me. Are there other
20 amendments to section fourteen?

21 (No response)

22 CHAIRMAN GRAYBILL: Members of the committee, you
23 have before you for your consideration, upon the recommendation
24 of Mr. Campbell, that when this committee does arise and report
25 after having had under consideration section fourteen as amend-

1 ed, that the same be recommended for adoption. All in favor
2 of that, say Aye.

3 DELEGATES: Aye.

4 CHAIRMAN GRAYBILL: Opposed, No.

5 DELEGATES: (No audible response)

6 CHAIRMAN GRAYBILL: Fourteen is adopted. Will the
7 Clerk read fifteen?

8 CLERK HANSON: (Reading) Section fifteen, Rights
9 of Persons Under the Age of Majority. The rights of persons
10 under the age of majority shall include, but not be limited
11 to, all the fundamental rights of this article except where
12 specifically precluded by laws which enhance the protection
13 for such persons. (End reading) Mr. Chairman, section fifteen.

14 CHAIRMAN GRAYBILL: Mr. Monroe -- I'm sorry.

15 DELEGATE MONROE: Mr. Chairman, I move that when
16 this committee does rise and report, after having under con-
17 sideration section fifteen, proposal number eight, it recom-
18 mends the same be adopted.

19 Mr. Chairman.

20 CHAIRMAN GRAYBILL: Mr. Monroe.

21 DELEGATE MONROE: The committee adopted, with one
22 dissenting vote, this statement explicitly recognizing that
23 persons under the age of majority have all the fundamental
24 rights of the Declaration of Rights. The only exceptions per-
25 mitted in this recognition are in cases in which rights are

1 infringed by laws designed and operating to enhance the pro-
2 tection for such persons. The committee took this action in
3 recognition of the fact that young people who have not been
4 held to possess basic civil rights -- although it has been
5 held that they are persons under the due process clause of the
6 Fourteenth Amendment, the supreme court has not ruled in their
7 favor under the equal protection clause of that same amendment.
8 What this means is that persons under the age of majority
9 have been accorded certain specific rights which are felt to
10 be part of the due process. However, the broad outline of
11 the kinds of rights young people possess does not yet exist.
12 This is the crux of the committee proposal--to recognize that
13 persons under the age of majority have the same protections
14 from governmental and majoritarian abuses as do adults. In
15 such cases where the protection of the special status of minors
16 demands it, exceptions can be made on clear showing that such
17 protection is being enhanced. This provision was taken in
18 part from Delegate Proposal Number Sixty-Five and Number
19 Eighty-Eight. Mr. Foster, I think -- one of his proposals --
20 I think they've got the wrong number there, but it was sixty-
21 five, my proposal, and Mr. Foster's proposal, I believe, were
22 the ones that were combined to make this section fifteen. I
23 would disclose at the beginning that I have a special interest
24 in this particular section. For about the past ten years, I
25 have been involved in youth development type programs with

1 the YMCA and Red Cross, Encampment for Citizenship and Mockford
2 Development and school programs, et cetera, and from this ex-
3 perience I have learned to know young people and to understand
4 many of their circumstances. What this section is attempting
5 to do is to help young people to reach their full potential.
6 Where juveniles have rights at this time we certainly want to
7 make sure that those rights and privileges are retained and
8 whatever rights and privileges that might be given to them in
9 the future, we also want to protect them, but we do not want
10 them to lose any rights that any other Montana citizen has,
11 and this is specifically what this particular section is at-
12 tempting to do. We hope that it would enhance the proper
13 parent-child relationships in Montana families and help strength-
14 en the family unit. We had a lot of very informative and well
15 presented testimony from many different groups in our commun-
16 ity and our state. The Montana Advisory Council on Children
17 and Youth came before us with five people testifying, repre-
18 senting over the past couple of years over two hundred commun-
19 ity type meetings involving over six thousand people. As we
20 have been quoted to this body before, one-half of the state of
21 Montana's population is under the age of twenty-five, so when
22 we talk about children and youth in the state, or those people
23 under the age of majority, we know that we are talking about
24 from anywhere from one hundred to about a hundred and fifty
25 thousand people. Seventy-one people came before our committee

1 with five people giving written testimony. I consider these
2 people the cream of Montana's young adult crop. I have much
3 of the testimony here in brochures that you can view. Judge
4 Brownlee from Missoula has compiled the juvenile codes of the
5 state of Montana. I have these here for you to view. I think
6 all of us in the body have received letters from our own con-
7 stituents in our communities and areas that are concerned about
8 the rights of children under the age of majority. Our research
9 analyst of our committee compiled much information for us and
10 our committee report, pages three-oh-one to three-oh-five,
11 discussed the situation of people under the age of majority
12 quite thoroughly and from those -- this research and the
13 testimony we have devised section fifteen. In quoting our
14 chairman, Mr. Dahood, it is altogether fitting and proper that
15 we should give our young adults -- as our Chairman, our Pres-
16 ident of our Convention mentions, our most valuable resource --
17 and our chairman of our committee says that if we are expecting
18 these people to respect us, I think we should respect them in
19 some way. It seems to me that Montana can be the leader among
20 all the states in recognizing the rights of people under the
21 age of majority. If there are any questions, I'll certainly
22 try to answer them. I move that this section be adopted, Mr.
23 Chairman.

24 CHAIRMAN GRAYBILL: Is there discussion?

25 Mr. Rygg.

1 DELEGATE RYGG: Would Mr. Monroe yield to a question?

2 CHAIRMAN GRAYBILL: Mr. Monroe?

3 DELEGATE MONROE: I yield.

4 DELEGATE RYGG: I'm just wondering -- I read this and
5 I still wonder. Could you give me an example of what we are
6 doing? Just one concrete example so I can find out what you
7 are trying to do?

8 DELEGATE MONROE: O.K. Right now, young people are
9 not generally protected by constitutional standards of fair-
10 ness and due process of law, such as the right to counsel,
11 trial by peers or jury, the right against self-incrimination,
12 and the right to know the nature and cause of accusation.
13 I would cite myself, maybe, as an example, Mr. Rygg. In 1964
14 I had the pleasure of attending a basketball tournament in
15 Butte, Montana. It was a state basketball tournament and it
16 was the first one I had ever been to. Well, some of my friends
17 had traveled down to the tournament in the fair city of Butte
18 beforehand and along the way they stopped by Helena and they
19 had done some mischievous deeds, and they attended another
20 school and I met them in the city of Butte and asked them if
21 they could give me a ride to my motel. Well, at the time I
22 was in their car they were apprehended by the police officers
23 and I was incarcerated, and this was my first basketball tour-
24 nament and the only one I was ever able to attend. There I
25 was, without having seen a basketball game, sitting in the jail

1 of Butte. Now, I didn't know what I was sitting there for and
2 in this instance, I did not know the nature or the cause of
3 any of the accusations that were being brought against me. I
4 didn't know anything, and there I was incarcerated. I was not
5 able to make a phone call or anything. And that would be just
6 one small example. There's certainly examples of where child-
7 ren's rights are not afforded them in child abuse cases, for
8 example. I've got a file in here, the Montana Advisory Council
9 on Children and Youth has compiled of documentation of specif-
10 ic instances where a child's, or the rights of children and
11 youth are just non-existent, really, and what we are attempting
12 to do by this particular section is to give them rights, ex-
13 cept where specifically precluded by law. Now, when we say
14 specifically precluded by law -- let's say there's a law on
15 the books that says you've got to be sixteen years old to have
16 a driver's license and that is to protect and enhance that in-
17 dividual. That law is on the books to protect and enhance
18 them. Or if it says they must be nineteen years old, which is
19 the majority age in Montana right now until, hopefully, this
20 Constitution is adopted. Then it will be eighteen. But that
21 law, nineteen, that they could drink legally is there to pro-
22 tect them. So, we are suggesting that they would have all the
23 rights of this article except where it is specifically preclu-
24 ded by laws in this article, in this Constitution, or any laws
25 on the statute books that are there now to protect and enhance

1 them or that might come in the future. I went a little bit
2 further than answering your question, but my own specific ex-
3 ample is what I felt where some of the rights of some of those
4 people under the age of majority were being infringed upon.

5 CHAIRMAN GRAYBILL: Mr. Brown.

6 DELEGATE BROWN: Mr. Chairman, I don't see really the
7 purpose of this article, even after the explanation. This
8 Bill of Rights covers all people and it doesn't say only those
9 over the age of majority or those over the age of sixty-five
10 or anything else. It covers all the people and the example
11 that Mr. Moneor told about being put in jail, I know a lot of
12 adults who have been put in jail and never known what they were
13 charged with. And, I don't see where this serves any useful
14 purpose.

15 CHAIRMAN GRAYBILL: Mr. Dahood.

16 DELEGATE DAHOOD: Mr. Chairman, this does serve a
17 very definite and useful purpose. There is a constitutional
18 controversy throughout this land as to whether or not the
19 basic protections of the Bill of Rights shall be applied to
20 those persons who are not adults with respect to arrest, de-
21 tention and trial. We are not in this situation affecting in
22 any way the relationship of parent and child or of guardian
23 and ward with respect to someone under the age of majority.
24 Pay close attention to the fact that the last phrase reads,
25 except as specifically precluded by laws which enhance the

1 protection for such persons. So, as a consequence, what we
2 are doing by this article is focusing on the basic guarantees
3 that citizens have with respect to their person, their property
4 and their liberty. With respect to juvenile proceedings in
5 the state of Montana, every effort is made by our court and
6 by our judges to make sure that these young people do have what
7 we for ourselves consider due process. There are instances,
8 however, where these abuses do take place by many of our juven-
9 ile authorities thinking that persons under the age of eighteen
10 or under the age of nineteen at the present time, are not en-
11 titled to the basic rights that are accorded the adult citizen
12 in a court of record. For example, there are situations where
13 there are unlawful and unwarranted detentions. There are abuses
14 with respect to young boys and young girls. Searches and
15 siezures take place that violate the basic concept under our
16 Bill of Rights. Hearings are held under circumstances where a
17 true defense opportunity is not provided. Things have changed
18 in Montana and in America. Although we may say that the rule
19 is, by regulation and by common sense, that whatever you do be-
20 fore you reach the age of majority shall never be used against
21 you. Nevertheless, the investigatory processes throughout this
22 state and this nation are such that anymore, after you become
23 an adult, somehow they find something that perhaps had taken
24 place during the age of minority and that can be used against
25 you. It sometimes is used against you. When that record is

1 compared against the record of someone competing with you for
2 a particular position or place that does not contain that type
3 of apparent blemish, that person, of course, is going to be
4 selected and as a consequence a disservice is done simply be-
5 cause the thinking has been until recently, what difference
6 does it make if there has been some slight transgression with
7 respect to the right of the minor. It's not going to count
8 against him anyway. I assure you there is a definite need
9 for it. All we're going to do is make sure that the young
10 boys and the young girls, the young men, the young women, prior
11 to reaching the age of majority, are going to know that during
12 that particular period of maturity they shall have all the
13 basic rights that are accorded to all citizens of the state of
14 Montana, and they are going to be better trained to be more
15 responsible citizens. This is the least that we can do for
16 them. We are not upsetting anything. This is not revolution-
17 ary by any means. It merely makes sure that they have the
18 basic rights that many of us assume that they do have and
19 which they do not have, and this will make sure that this Con-
20 stitution and this Bill of Rights does apply to all citizens
21 regardless of age. Thank you, Mr. Chairman.

22 CHAIRMAN GRAYBILL: Is there further discussion?

23 (No response)

24 CHAIRMAN GRAYBILL: Very well, the issue arises on
25 the motion of Mr. Monroe that when this committee does rise

1 and report, after having had under consideration section fif-
2 teen, that it recommend that this section be adopted. So many
3 as shall --

4 DELEGATE HARPER: I ask for a roll call vote.

5 CHAIRMAN GRAYBILL: Roll call vote. So many as shall
6 be in favor, vote Aye; so many as shall be opposed, vote No.
7 Has every Delegate voted?

8 (No response)

9 CHAIRMAN GRAYBILL: Does any Delegate wish to change
10 his vote?

11 (No response)

12 CHAIRMAN GRAYBILL: Please take the vote.

13	Aasheim	-	Aye	Berthelson	-	Aye
14	Anderson, J.	-	Nay	Blaylock	-	Aye
15	Anderson, O.	-	Absent	Blend	-	Aye
16	Arbanas	-	Aye	Bowman	-	Nay
17	Arness	-	Aye	Brazier	-	Nay
18	Aronow	-	Aye	Brown	-	Nay
19	Artz	-	Aye	Bugbee	-	Absent
20	Ask	-	Aye	Burkhardt	-	Aye
21	Babcock	-	Aye	Cain	-	Aye
22	Barnard	-	Aye	Campbell	-	Aye
23	Bates	-	Aye	Cate	-	Aye
24	Belcher	-	Aye	Champoux	-	Aye
25	Berg	-	Aye	Choate	-	Aye

1	Conover	-	Aye	Jacobsen	-	Aye
2	Cross	-	Aye	James	-	Absent
3	Dahood	-	Aye	Johnson	-	Nay
4	Davis	-	Absent	Joyce	-	Aye
5	Delaney	-	Nay	Kamhoot	-	Nay
6	Driscoll	-	Aye	Kelleher	-	Aye
7	Drum	-	Aye	Leuthold	-	Aye
8	Eck	-	Aye	Loendorf	-	Aye
9	Erdmann	-	Nay	Lorello	-	Aye
10	Eskildsen	-	Excused	Mahone y	-	Aye
11	Etchart	-	Aye	Mansfield	-	Aye
12	Felt	-	Absent	Martin	-	Aye
13	Foster	-	Aye	McCarvel	-	Aye
14	Furlong	-	Aye	McDonough	-	Aye
15	Garlington	-	Aye	McKeon	-	Aye
16	Gysler	-	Aye	McNeil	-	Aye
17	Habedank	-	Absent	Melvin	-	Nay
18	Hanson, R. S.	-	Aye	Monroe	-	Aye
19	Hanson, R.	-	Aye	Murray	-	Absent
20	Harbaugh	-	Aye	Noble	-	Aye
21	Harlow	-	Aye	Nutting	-	Aye
22	Harper	-	Aye	Payne	-	Aye
23	Harrington	-	Aye	Pemberton	-	Aye
24	Heliker	-	Aye	Rebal	-	Aye
25	Holland	-	Nay	Reichert	-	Aye

1	Robinson	-	Aye	Studer	-	Aye
2	Roeder	-	Aye	Sullivan	-	Aye
3	Rollins	-	Aye	Swanberg	-	Nay
4	Romney	-	Absent	Toole	-	Absent
5	Rygg	-	Absent	Van Buskirk	-	Aye
6	Scanlin	-	Aye	Vermillion	-	Aye
7	Schiltz	-	Aye	Wagner	-	Aye
8	Siderius	-	Aye	Ward	-	Absent
9	Simon	-	Aye	Warden	-	Aye
10	Skari	-	Aye	Wilson	-	Absent
11	Sparks	-	Aye	Woodmansey	-	Aye
12	Speer	-	Aye	Mr. Chairman	-	Aye

13 CLERK SMITH: Mr. Chairman, seventy-six have voted
14 Aye, eleven have voted No.

15 CHAIRMAN GRAYBILL: Seventy-six having voted Aye
16 and eleven No, section fifteen is adopted.

17 Mr. Murray.

18 DELEGATE MURRAY: Mr. Chairman, I move that the com-
19 mittee recess for fifteen minutes.

20 CHAIRMAN GRAYBILL: The motion is to recess for fif-
21 teen minutes, or until ten minutes to four. All in favor say
22 Aye.

23 DELEGATES: Aye.

24 CHAIRMAN GRAYBILL: Opposed, No.

25 DELEGATES: (No audible response)

1 CHAIRMAN GRAYBILL: So ordered.

2
3 (Committee in recess from 3:35 o'clock
4 until 3:59 o'clock, P.M.)

5 CHAIRMAN GRAYBILL: The committee will come to order.
6 Ladies and gentlemen, just before the recess we had finished
7 section fifteen and we are ready to start on section sixteen.
8 Mr. Clerk, will you please read section sixteen?

9 CLERK SMITH: (Reading) Section sixteen, The Ad-
10 ministration of Justice: Courts of justice shall be open to
11 every person, and speedy remedy afforded for every injury of
12 person, property or charadter. No person shall be deprived of
13 this full legal redress for injury incurred in employment for
14 which another person may be liable except as to fellow employ-
15 ees and his immediate employer who hired him if such immediate
16 employer provides coverage under the Montana workmen's comp-
17 ensation laws of this state; and that right and justice shall
18 be administered without sale, denial or delay. (End reading)
19 Section sixteen, Mr. Chairman.

20 CHAIRMAN GRAYBILL: Mr. Murray..

21 DELEGATE MURRAY: Mr. Chairman, I move that when
22 this committee does rise and report, after having had under
23 consideration section sixteen of proposal eight, it recommend
24 the same be adopted.

25 Mr. Chairman.

1 CHAIRMAN GRAYBILL: Mr. Murray.

2 DELEGATE MURRAY: The committee voted unanimously
3 to retain this section with one important addition. The pro-
4 vision as it stands in the present Constitution guarantees
5 justice and a speedy remedy for all without sale, denial or
6 delay. The committee felt, in light of a recent interpreta-
7 tion of the workmen's compensation law, that this remedy needed
8 to be explicitly guaranteed to persons who may be employed by
9 one covered by workmen's compensation to work on the facilities
10 of another. Under Montana law, as announced in the recent de-
11 cision of Ashcraft versus Montana Power Company, the employee
12 has no redress against third parties for injuries caused by
13 them if his immediate employer is covered under the workmen's
14 compensation law. The committee feels that this violates the
15 spirit of the guarantee of a speedy remedy for all injuries of
16 person, property or character. It is this specific denial,
17 and this one only, that the committee intends to alter with the
18 following additional wording: no person shall be deprived of
19 this full legal redress for injury incurred in employment for
20 which another person may be liable except as to fellow employ-
21 ees and his immediate employer who hired him if such immediate
22 employer provides coverage under the workmen's compensation laws
23 of this state. In other words, the committee wants to insure
24 that the workmen's compensation laws of the state will be used
25 for their original purpose--to provide compensation to injured

1 workmen--rather than to deprive an injured worker of redress
2 against negligent third parties--beyond his employer and fellow
3 employees--because his immediate employer is covered by work-
4 men's compensation. The committee believes that clarifying
5 this remedy would have a salutary effect on the conscientious-
6 ness of persons who may contract out work to be done on their
7 premises. To permit no remedy against third parties in cases
8 where the employer is covered by workmen's compensation is
9 to encourage persons with run-down premises to contract out
10 work without improving the quality of the premises. The com-
11 mittee urges that this is an abuse of the workmen's compensa-
12 tion law and constitutes a misapplication of that law to pro-
13 tect persons who are negligent. The committee commends this
14 provision to the Convention with the belief that it is an
15 important, if technical, aspect of the administration of jus-
16 tice. Those are the remarks which are contained in the book-
17 let. Let me amplify them by saying basically this. We feel
18 the right to third party action is a right which we should es-
19 tablish in our Constitution. It is a right which working men
20 and women who are unfortunate enough to be injured have had
21 for nearly eighty years in this state. We feel that it was
22 wrongly taken away from these people by the supreme court de-
23 cision which was mentioned. We feel that we perhaps are leg-
24 islating in asking that this be written into our Constitution
25 but we of the committee really believe that we are acting in

1 a judicial manner in asking that it be written in the Consti-
2 tution for we feel that this perhaps -- this Convention, per-
3 haps, is the court of last resort for injured working men and
4 women in Montana with respect to the third party law suit and
5 we recommend the section be adopted.

6 CHAIRMAN GRAYBILL: Mrs. Bowman.

7 DELEGATE BOWMAN: Mr. Chairman, I wonder if Mr. Mur-
8 ray would yield to a question?

9 CHAIRMAN GRAYBILL: Mr. Murray, will you yield?

10 DELEGATE MURRAY: Yes, Mr. Chairman.

11 DELEGATE BOWMAN: Mr. Murray, I don't understand what
12 this means and I wonder if you would explain it, giving us a
13 specific example of what happened so we would know what you are
14 talking about.

15 DELEGATE MURRAY: Mrs. Bowman, in the case in ques-
16 tion, the -- one of the important utilities of the state hired
17 a contractor to repair some of its power lines and the employee
18 of the contractor that was hired crawled up a power pole and
19 while there working on that pole, it broke and fell with him to
20 the ground and he was injured. In the case in question, because
21 of the decision of the supreme court, the injured employee was
22 limited to workmen's compensation benefits through the cover-
23 age of the contractor. Ordinarily, if it were not for this
24 interpretation, the injured employee would be entitled to sue
25 the important utility in this state and recover in addition to

1 his workmen's compensation benefits. Those benefits, or a
2 portion of those benefits recovered under workmen's compensa-
3 tion, did he -- or were he to make a recovery against the im-
4 portant utility, would be paid back under the theory of sub-
5 rogation to the industrial accident fund of the state of Mon-
6 tana. But, does that explain basically what occurred, at least
7 in this one instance?

8 CHAIRMAN GRAYBILL: Mr. Habedank.

9 DELEGATE HABEDANK: Mr. Chairman, I move to delete
10 from section sixteen, page twenty-nine, commencing with the
11 line twenty-seven, the words beginning with no person, ending
12 the deletion with the word, state, on line two, page thirty.

13 CHAIRMAN GRAYBILL: Beginning with the words, no
14 person?

15 DELEGATE HABEDANK: Yes.

16 CHAIRMAN GRAYBILL: On page seven that would mean
17 you would delete lines nine through thirteen, plus the word,
18 state, on line fourteen.

19 DELEGATE HABEDANK: I would have to go back to page
20 seven to check that.

21 CHAIRMAN GRAYBILL: In other words, you move to de-
22 lete the clause that covers the matter that Mr. Marshall
23 Murray was just talking about.

24 DELEGATE HABEDANK: This is correct.

25 CHAIRMAN GRAYBILL: Very well, Mr. Habedank has an

1 amendment which would proposed to delete lines nine to four-
2 teen on page seven or lines whatever it was he gave on the
3 other page, namely this industrial accident or workmen's com-
4 pensation problem.

5 Mr. Habedank.

6 DELEGATE HABEDANK: Mr. President, ladies and gent-
7 lemen. I have no objection to this being in here if you put
8 it in here with full knowledge of what you are doing. The de-
9 cision of the supreme court in the Ashcraft case, which I
10 heard and which was brilliantly argued by Mr. Dahood, made
11 quite a change in what a lot of us thought the law was. How-
12 ever, they were interpreting a specific statute of the state
13 of Montana. All that is necessary to change their interpre-
14 tation is to amend the statute of the state of Montana. And
15 you, if you adopt this particular provision, are writing into
16 the Constitution by vote of a majority of this group what I
17 consider to be strictly statutory matter. This may be a laud-
18 able objective and in interpreting the Ashcraft case your at-
19 tention may be directed to the Montana Power Company. I think
20 they were the defendant but it doesn't make any difference be-
21 cause the next case that could arise in this would be a case
22 where you, as the owner of a house, contract with somebody else
23 to renovate that house. You require the contractor to carry
24 industrial accident coverage. His employee is hurt. He re-
25 covers compensation under the coverage which you have required

1 the contractor to carry and then he in turn, turns around and
2 sues you as the owner because of your alleged negligence in
3 doing something in connection with this house that makes you
4 liable to him because he was hurt because of your negligence.
5 As I view this amendment, it will not allow anyone to recover
6 from anyone else without negligence on the part of the person
7 being charged. However, it will eliminate the ability of you
8 as a owner to hire an independent contractor, require him to
9 carry workmen's compensation as part of the coverage and be
10 assured that you will not be sued on a third party claim. As
11 I recall the interpretation of the supreme court in the Ash-
12 craft case, and I'm sure Mr. Dahood will correct me if I'm
13 wrong, this was -- the intent of the decision or the purport
14 of it was to prevent an employee from collecting on a third
15 party claim from either the prime contractor or the owner. He
16 was barred as to those two people. He can still sue as to any
17 other third party who may be responsible for his injury. But,
18 as to the owner or the prime contractor who hires the sub-
19 contractor, he is effectively barred from his suit. Now, in
20 1971, I believe it was, an amendment to this act was proposed
21 to the legislature which would correct this opinion, this con-
22 struction of the statute by our supreme court and it failed
23 to get through both houses of the legislature. Whether that
24 would be true in the next session, I do not know. So, if you
25 wish to include this, I think you should do it knowingly. I

1 will disclose my interest in this thing. I am a practicing
2 lawyer. I defend many insurance companies. I defend people
3 who are insured, and I do not worry about either the insurance
4 company or the people who are insured because they pay me and
5 if they are sued, then I defend. But, I don't think that the
6 people who are not aware of this, who hire independent contrac-
7 tors to do a job and are not aware of the fact that they can
8 be sued because they are the owner, as a result of this change,
9 should make this change without knowing what they are doing.

10 CHAIRMAN GRAYBILL: Mr. Dahood.

11 DELEGATE DAHOOD: Mr. Chairman, I had intended not
12 to speak on this particular section simply because I was trial
13 counsel on behalf of Charles Ashcraft, who is permanently dis-
14 abled for the rest of his life. He shall never work again at
15 his trade. I have heard this argument in the supreme court,
16 an argument that had no basis in logic. I have heard it by
17 several defense counsel who represent the best of corporate
18 interests, that this is going to affect the individual property
19 owner and if he hires a contractor, he is going to be exposed
20 to a liability that is unprecedented and they did not experience
21 before. This is totally untrue. This section is doing more,
22 and the wording has been very precisely selected to make sure
23 it does nothing more than place the injured working man back
24 in the status he enjoyed prior to 1971, a very basic constitu-
25 tional right which he enjoyed for eighty years in the state of

1 Montana. What happened in the Ashcraft case? The Montana
2 Trial Lawyers Association, one hundred and fifty members strong
3 to a man, without a dissent, believes that this Constitutional
4 Convention must return this right to the injured working man.
5 The unions, without exception, believe that a very basic right
6 has been taken away from the injured working man in the state
7 of Montana, and I understand that the corporate interests that
8 are specifically involved in this have decided that they will
9 not ask anyone to offer opposition to it on the Convention
10 floor. Here is what happened in the Ashcraft case. Charles
11 Ashcraft worked for an independent contractor having no con-
12 nection with the Montana Power Company. The Montana Power
13 Company made what we call an independent contract to have a
14 new phase placed upon their power poles. Charles Ashcraft
15 went thirty-five feet into the air. He was there for twenty
16 minutes. Without warning, without any chance to protect him-
17 self, that pole gave way below ground level and carried
18 Charles Ashcraft thirty-five feet to the ground. He was ninety
19 some days in the hospital, but he survived, but he will not
20 work at his trade again. What were the real facts -- and keep
21 this in mind. We are only talking about a situation where
22 someone, through negligence, through a failure to use due care,
23 has brought about the injury. There is nothing automatic.
24 You may still suffer injury that is no fault of anyone else --
25 not recover. We are not talking about that. So, what were

1 the facts? Dr. Clancy Gordon, one of the environmental advo-
2 cates, was retained by us. He is a professor of botany at the
3 university of Montana. He examined the pole and found several
4 apparent things about it. One, it violated the statute of the
5 state of Montana that has been on the statute books for more
6 than fifty years, that power companies must construct their
7 poles from cedar quality or other standardized material. This
8 was a lodgepole pine. It was not as required by statute. This
9 was a lodgepole pine that has a useful life of from seventeen
10 to twenty years at the most. This pole had been in place for
11 more than twenty-three years and had not been inspected for
12 more than five years before the accident occurred. As a con-
13 sequence, the rotting that took place, took place below the
14 ground level where the linemen, before climbing the pole,
15 could not detect it, even though in this instance Charles Ash-
16 craft did what he was trained to do. He took a shovel and dug
17 around the base of the pole. And, as a consequence, through
18 the negligence of the Montana Power Company, he suffered this
19 permanent injury. Up until this decision by the supreme court
20 there was no question that in that situation the injured cit-
21 izen, the injured working man had a right for proper redress.
22 The workmen's compensation law, which is inadequate at best,
23 has certain public reasons for its existence. It applies only
24 between the employer and the employee. So, clever legal coun-
25 sel for the Montana Power Company, and very able, decided may-

1 be there's some way to get away from this case. So, they went
2 back to 1965, when the legislature amended the independent con-
3 tractor law to provide that you no longer could defend on the
4 ground that someone injured within your work premises was not
5 entitled to workmen's compensation from you because he was em-
6 ployed by an independent contractor, unless you insisted that
7 that independent contractor carry workmen's compensation. The
8 legislators that were behind that amendment were interviewed.
9 They said, we had no intention whatsoever of bringing about the
10 results that were brought about by this supreme court decision,
11 and you have to strain the reading of that particular section
12 to come up with that particular position. But, nevertheless,
13 the supreme court -- and there's a very bitter dissent on that
14 case -- a long and well-reasoned dissent. But, in any event,
15 in that case they fastened upon that as a justification and an
16 excuse for denying this working man his remedy. When that hap-
17 pened--and this was after Judge Battin of the federal court in
18 a similar case had ruled in Montana that this amendment does
19 not do that--he then had to change his mind because under fed-
20 eral law, he's bound by a Montana decision. The legal community
21 was shocked. None of us was able to explain the result to the
22 unions, to the working people. This particular right was taken
23 away from the working man after eighty years, so promptly leg-
24 islators introduced a bill in the senate to overcome that. It
25 passed the senate--and I don't want to make a bicameral or a

1 unicameral argument here. Promptly the lobby of the vested
2 corporate interests went across the hall -- and we determined
3 this to be true -- and made sure that it did not pass in the
4 house. So, we are now at the court of last resort. We allowed
5 in our Bill of Rights an amendment to a clean and healthy en-
6 vironment. By this provision and this amendment we are going
7 to provide for the working man a safe environment. How does
8 the law stand at the moment? Let me tell you how it stands.
9 And some of the big vested corporate interests are now using
10 independent contractors because it's reduced their cost of op-
11 eration. If you have some particular tough job that you want
12 done on your premises where there may be some danger connected
13 with it, what you do, you go out and you hire an independent
14 contractor. Don't have your employees in that dangerous area
15 because if they're hurt or if there's an accident you have to
16 pay them workmen's compensation. So here's the way you do it
17 now that we have immunity from the supreme court--an immunity
18 neither intended by the people nor intended by the legislature.
19 What you do, you hire someone on an independent contractor
20 basis and their employees are in this dangerous area. You
21 don't have to worry about safety any more. You don't have to
22 do anything to make your premises safe. You don't have to be
23 concerned about a safe environment for the people that are
24 working there to benefit your interests. If they're injured,
25 even though it's the most blatant type of negligence and care-

1 lessness, all you have to say is, well, we're sorry. But you
2 have your workmen's compensation. Maybe you have a wife and
3 seven children. It's sixty-five dollars a week for a while and
4 it's sixty and now, of course, the legislature has raised it
5 and you can get more money, but that's it. The workmen's
6 compensation people were astounded at the decision. They sent
7 their lawyers up to petition for rehearing. I do not think
8 that any strong legal mind could really and truly justify what
9 had happened, which has resulted in this, that in a particular
10 area of industry now, we need not have a safe environment for
11 the working man. The vested corporate interest has immunity
12 without paying anything for it. Now, how does it work if we
13 return this basic right that the injured working man had for
14 eighty years? Simply this. Let's assume -- let's take the
15 Charles Ashcraft situation. Charles Ashcraft is injured. He
16 proves all these factors about the negligence of the Montana
17 Power Company. He is paid his workmen's compensation, so he
18 files what the lawyers call a third party law suit. The Mon-
19 tana Power Company then is compelled to acknowledge its obli-
20 gation. They make payment. He then pays back to the workmen's
21 compensation carrier. We have a provision in Montana in the
22 workmen's compensation law that provides for these actions--
23 the working man doesn't bring it, the industrial accident board
24 does. That law has never been changed. But how about now?
25 That law is almost useless because of this particular interpre-

1 tation. So what has happened? Regardless of all this conflict,
2 this technicality, having to use the word, workmen's compensa-
3 tion, in this particular section, which we didn't want to do,
4 because the minute we did it we knew someone would jump up and
5 say it's legislative, but if you're going to draft something
6 with precision and you want to make sure that all that you're
7 doing is returning the law to what it was prior to this de-
8 cision a year ago, you are compelled sometimes in fashioning
9 this precise language to use language that may be seized upon
10 by someone else as legislative. It is not. It is giving back
11 a basic constitutional right that the citizen of Montana had
12 prior to that particular decision. And we submit to you that
13 by this particular provision, all that we are doing is return-
14 ing that right to the working man and how can anyone truly,
15 justly object to doing that and only that. Now, that is what
16 happened in that particular situation. This is a constitu-
17 tional provision. We say in the first sentence that every
18 citizen shall have the right to full legal redress. We have
19 taken away full legal redress in that particular area. We
20 want to give full legal redress back in that one specific area
21 and that is why it is framed in that particular fashion and we
22 submit to you, our fellow Delegates, that we are here to make
23 sure that the rights of the citizen are protected and this is
24 nothing more than a step forward to make sure that they will
25 continue to have a protection that existed for eighty years.

1 We submit it's a constitutional matter and that the amendment
2 is required to have a progressive Bill of Rights. Thank you,
3 Mr. Chairman.

4 CHAIRMAN GRAYBILL: Mr. McCarvel.

5 DELEGATE MCCARVEL: Mr. Chairman, I rise in opposition
6 to Mr. Habedank's amendment. I think if there's anything that
7 should be put into this Constitution, it's the right of a work-
8 ing man. And I feel by this decision of the supreme court that
9 he has been denied this right. So, I ask the Delegates to vote
10 against the amendment and to support the committee's proposal.
11 Thank you.

12 CHAIRMAN GRAYBILL: Mr. McDonough.

13 DELEGATE McDONOUGH: I also support the committee's
14 proposal. In eastern Montana there's a lot of accidents in the
15 oil fields and practically all the work is subcontracted out
16 or contracted out, and we never dreamed -- and Mr. Habedank,
17 I'm sure, admits himself he never dreamed because he has de-
18 fended these law suits -- that the supreme court would rule in
19 this manner. And I support the committee's proposal because
20 it just -- it was a very bad law and it should be restored.

21 CHAIRMAN GRAYBILL: Mr. Johnson.

22 DELEGATE JOHNSON: Mr. Chairman, would Mr. Dahood
23 yield to a question, please?

24 CHAIRMAN GRAYBILL: Mr. Dahood?

25 DELEGATE DAHOOD: I yield, Mr. Chairman.

1 DELEGATE JOHNSON: Wade, I'm a cattle rancher down
2 in southeastern Montana and 'way, 'way back in the hills, off
3 the road, we have to maintain our own road. In fact, it's
4 twelve miles. We built what kind of a road we have and we try
5 to get by on it. We have some homemade bridges there and that.
6 As a point of clarification, I want to ask you, were we to con-
7 tract somebody to do some work on this road and perhaps one of
8 them with a piece of heavy equipment were doing some shalëing
9 or graveling of this or that and one of these bridges would
10 collapse and one of those men would be hurt, then I would be
11 responsible?

12 DELEGATE DAHOOD: Torrey, you would not be respon-
13 sible. This amendment does nothing more than return the law
14 to what it was about a year ago. Please recall what I said.
15 The only time that someone would be responsible, such as the
16 Montana Power Company, is when they are negligent, they are
17 guilty of some type of civil wrong doing. And this other ar-
18 gument that has been used, that it's going to open you up, or
19 it's going to open the owner of a residence up to some type of
20 law suit is simply, absolutely not true. That's why we fash-
21 ioned this language precisely as we have. We are doing nothing
22 more than trying to return the law to what it was prior to a
23 year ago. Your situation would be no different than it's been
24 in all the years gone by, Torrey.

25 DELEGATE JOHNSON: Thank you.

1 CHAIRMAN GRAYBILL: Mrs. Eck.

2 DELEGATE ECK: I rise to support our committee's
3 recommendation for this section. I admit that when it first
4 came up for discussion I was appalled at the idea of having
5 something like this in the Bill of Rights. Since that time,
6 I have talked to a good many lawyers. I have only run into a
7 couple of them who don't feel that this supreme court case was
8 grossly unfair, that an injustice was done to the state, and
9 that the best way to remedy it would be to put it into the
10 Constitution. I did talk with one district judge who suggested
11 that, given a period of time, the climate and the character
12 of the supreme court probably would change and they probably
13 would reverse this. But, I think that in the meantime a good
14 many Montanans are going to suffer an injustice, and I think
15 that for the most part our Bill of Rights is really to prevent
16 injustice, even to the few. I also hesitated seeing it come
17 up on the floor because I think it really represents a slap in
18 the face to our supreme court, and this has been discussed with
19 a great many people, but I think that in this case the Consti-
20 tutional Convention does have an opportunity to correct a most
21 unfortunate situation.

22 CHAIRMAN GRAYBILL: Very well, Mr. Habedank, do you
23 want to close?

24 DELEGATE HABEDANK: Yes, Mr. President. You have had
25 the matter very fairly presented to you by Mr. Dahood. As I

1 told you in the first place, I do not particularly oppose this
2 particular amendment, but I have been told that we lawyers are
3 writing the Constitution, trying to slip matters into this
4 Constitution for our own personal gain. You have had the pro
5 and the con given to you. This is something that can be cor-
6 rected by the legislature. You have it in your power to be
7 the supreme legislature, as the committee has requested you
8 to do. I leave it to you, but I do think that when you do it
9 you should do it knowing what you do and not accuse the lawyers
10 of pulling the wool over your eyes.

11 CHAIRMAN GRAYBILL: Very well, the question is on
12 Mr. Habedank's motion to delete lines nine through fourteen.

13 DELEGATE ROMNEY: Roll call vote.

14 CHAIRMAN GRAYBILL: We'll have a roll call vote.
15 So many as shall be in favor of Mr. Habedank's motion to delete
16 this material, vote Aye; so many as are opposed, vote No.
17 Has every Delegate voted?

18 (No response)

19 CHAIRMAN GRAYBILL: Does any Delegate wish to change
20 his vote?

21 (No response)

22 CHAIRMAN GRAYBILL: Very well, please take the vote.

23	Aasheim	-	Nay	Arbanas	-	Nay
24	Anderson, J.	-	Nay	Arness	-	Nay
25	Anderson, O.	-	Nay	Aronow	-	Nay

1	Artz	-	Nay	Driscoll	-	Nay
2	Ask	-	Nay	Drum	-	Nay
3	Babcock	-	Nay	Eck	-	Nay
4	Barnard	-	Nay	Erdmann	-	Nay
5	Bates	-	Nay	Eskildsen	-	Excused
6	Belcher	-	Nay	Etchart	-	Aye
7	Berg	-	Aye	Felt	-	Aye
8	Berthelson	-	Aye	Foster	-	Nay
9	Blaylock	-	Nay	Furlong	-	Nay
10	Blend	-	Absent	Garlington	-	Aye
11	Bowman	-	Nay	Gysler	-	Nay
12	Brazier	-	Aye	Habedank	-	Aye
13	Brown	-	Nay	Hanson, R. S.	-	Nay
14	Bugbee	-	Absent	Hanson, R.	-	Nay
15	Burkhardt	-	Nay	Harbaugh	-	Nay
16	Cain	-	Nay	Harlow	-	Nay
17	Campbell	-	Nay	Harper	-	Nay
18	Cate	-	Nay	Harrington	-	Nay
19	Champoux	-	Nay	Heliker	-	Nay
20	Choate	-	Nay	Holland	-	Nay
21	Conover	-	Aye	Jacobsen	-	Nay
22	Cross	-	Nay	James	-	Nay
23	Dahood	-	Nay	Johnson	-	Aye
24	Davis	-	Absent	Joyce	-	Nay
25	Delaney	-	Absent	Kamhoot	-	Absent

1	Kelleher	-	Nay	Rollins	-	Absent
2	Leuthold	-	Nay	Romney	-	Nay
3	Loendorf	-	Nay	Rygg	-	Nay
4	Lorello	-	Nay	Scanlin	-	Nay
5	Mahoney	-	Absent	Schiltz	-	Nay
6	Mansfield	-	Nay	Siderius	-	Nay
7	Martin	-	Nay	Simon	-	Nay
8	McCarvel	-	Nay	Skari	-	Nay
9	McDonough	-	Nay	Sparks	-	Absent
10	McKeon	-	Nay	Speer	-	Nay
11	McNeil	-	Nay	Studer	-	Aye
12	Melvin	-	Nay	Sullivan	-	Nay
13	Monroe	-	Nay	Swanberg	-	Absent
14	Murray	-	Nay	Toole	-	Nay
15	Noble	-	Nay	Van Buskirk	-	Nay
16	Nutting	-	Aye	Vermillion	-	Nay
17	Payne	-	Nay	Wagner	-	Nay
18	Pemberton	-	Aye	Ward	-	Aye
19	Rebal	-	Nay	Warden	-	Nay
20	Reichert	-	Nay	Wilson	-	Aye
21	Robinson	-	Nay	Woodmansey	-	Nay
22	Roeder	-	Nay	Mr. Chairman	-	Nay

23 CLERK SMITH: Mr. Chairman, fourteen have voted Aye,
 24 seventy-six have voted No.

25 CHAIRMAN GRAYBILL: Seventy-six having voted No and

1 fourteen Aye, Mr. Habedank's motion does not pass. We are on
2 section sixteen. Are there other amendments?

3 (No response)

4 CHAIRMAN GRAYBILL: If not, members of the committee,
5 you have before you on the recommendation of Mr. Murray that
6 when this committee does arise and report, after having had
7 under consideration section sixteen, that it recommend the
8 same shall be adopted. All in favor say Aye.

9 DELEGATES: Aye.

10 CHAIRMAN GRAYBILL: Opposed, No.

11 DELEGATES: (No audible response)

12 CHAIRMAN GRAYBILL: So ordered. Will the Clerk read
13 section seventeen?

14 CLERK SMITH: (Reading) Section seventeen - Due
15 Process of Law: No person shall be deprived of life, liberty
16 or property without due process of law. (End reading) Section
17 seventeen, Mr. Chairman.

18 CHAIRMAN GRAYBILL: Mr. Murray.

19 DELEGATE MURRAY: Mr. Chairman, the committee felt
20 that the tradition-ridden phrasing of the due process of law
21 clause should remain just as it is. Accordingly, the wording
22 of article three, section twenty-seven, of our present Consti-
23 tution is incorporated verbatim in this proposal. The commit-
24 tee received no suggestion for change in this section and we
25 recommend its adoption.

1 CHAIRMAN GRAYBILL: Is there any discussion of
2 section --

3 DELEGATE MURRAY: Excuse me, Mr. Chairman. I move
4 that when this committee does rise and report, after having
5 had under consideration section seventeen of proposal number
6 eight, it recommend the same be adopted, with the explanation
7 I gave.

8 CHAIRMAN GRAYBILL: Is there any discussion of
9 section seventeen?

10 (No response)

11 CHAIRMAN GRAYBILL: So many as shall be in favor of
12 the motion of Mr. Murray, please say Aye.

13 DELEGATES: Aye.

14 CHAIRMAN GRAYBILL: Opposed, No.

15 DELEGATES: (No audible response)

16 CHAIRMAN GRAYBILL: Section seventeen is adopted.
17 Will the Clerk read section eighteen.

18 CLERK SMITH: (Reading) Section eighteen, Non-
19 Immunity from Suit: The state and its subdivisions shall have
20 no special immunity from suit. This provision shall apply
21 only to causes of action arising after June 1, 1973. (End
22 reading) Section eighteen, Mr. Chairman.

23 CHAIRMAN GRAYBILL: Mr. Murray.

24 DELEGATE MURRAY: Mr. Chairman, I move that when this
25 committee does rise and report, after having had under consid-

1 eration section eighteen of proposal number eight, it recom=
2 mend the same be adopted.

3 Mr. Chairman.

4 CHAIRMAN GRAYBILL: Mr. Murray.

5 DELEGATE MURRAY: This particular provision has on
6 page thirty-one, thirty-two and thirty-three some very lengthy
7 notes that explain what we are attempting to do here. This
8 is the doctrine. All of us know it--the vernacular that the
9 king can do no wrong. It is an old and archaic doctrine but
10 it is one which the state of Montana has adhered to except in
11 those instances where by statute the state had said that there
12 will not be immunity to the extent of insurance coverage. We
13 feel that the doctrine of sovereign immunity, which we are
14 attempting to do away with by this particular provision, really
15 means that the king can do whatever he wants but he doesn't
16 have to pay for it and we'd like to do away with that doctrine.
17 We are well aware of the fact that the trend in the United
18 States is to do away with this doctrine. We are aware of the
19 fact that a Colorado case did away with the doctrine. We re-
20 cognize that we took our Constitution and some of our basic
21 laws from Colorado and we think that now is the time and that
22 this is the place for Montanans to do away with this particular
23 archaic doctrine and we recommend the adoption of the committee
24 report.

25 CHAIRMAN GRAYBILL: Mr. Habedank. Do you want the

1 Chair to read your amendment?

2 DELEGATE HABEDANK: Please.

3 CHAIRMAN GRAYBILL: Will the Clerk please read Mr.
4 Habedank's amendment?

5 CLERK SMITH: (Reading) Mr. Chairman, I move to
6 amend section eighteen, line twenty-six, page thirty-one, by
7 adding the following words after the word, suit: for injury
8 to a person or property. As amended, the section would read:
9 Section eighteen - Non-Immunity from Suit: The state and its
10 subdivisions shall have no special immunity from suit for
11 injury to a person or property. This provision shall apply
12 only to causes of action arising after June 1, 1973. Signed,
13 Habedank. (End reading)

14 CHAIRMAN GRAYBILL: Mr. Habedank has an amendment
15 that adds this language on page seven. It's at the end of
16 line twenty after the word, suit: immunity from suit for in-
17 jury to a person or property.

18 Mr. Habedank.

19 DELEGATE HABEDANK: Mr. President, I have no objec-
20 tion to eliminating non-immunity for the state. However, end-
21 ing where it does, I am not certain how far it may go and I
22 do object to going beyond injury to person or property. In
23 North Dakota, the amendment which they adopted to be submitted
24 to the people reads: Suits may be brought against the state
25 and its political subdivisions for negligent injury to a person

1 or his property, but the legislative assembly may provide for
2 reasonable limitations. That's the end of their amendment.
3 With the provision as it has been offered by the committee and
4 as amended by me, various bodies can purchase liability insur-
5 ance, and they are given time in which to do it, June 1, 1973,
6 and if an injury occurs they will still not be liable unless
7 there is negligence, but at least no one will be able to hide
8 behind the skirts of the governmental immunity clause in pro-
9 hibiting the very people they took insurance to protect from
10 obtaining redress for their wrongs. Limited as it is, for
11 injury to a person or property, the legislature is still free
12 to make it more open, if they desire to in the future. But
13 we at least have assured the people of the state of Montana
14 that they can sue for negligent injury.

15 CHAIRMAN GRAYBILL: Mr. Murray.

16 DELEGATE MURRAY: Mr. Chairman, I have reviewed with
17 Mr. Habedank and with Chairman Dahood the amendment proposed
18 and the committee -- and I'm sure I speak for it -- will
19 concede to the amendment.

20 CHAIRMAN GRAYBILL: Mr. Holland.

21 DELEGATE HOLLAND: Will Mr. Murray yield to a ques-
22 tion?

23 CHAIRMAN GRAYBILL: Mr. Murray.

24 DELEGATE MURRAY: I yield.

25 DELEGATE HOLLAND: Putting this limitation on an

1 injury to a person, what if through the negligence of, we'll
2 say, the state of Montana someone is killed and his survivors--
3 what about their rights?

4 DELEGATE MURRAY: Well, I think they would still
5 apply under this section. It's my intention that it would,
6 yes.

7 DELEGATE HOLLAND: What is the purpose of the limit-
8 ation by limiting the injury just to a person?

9 DELEGATE MURRAY: It's Mr. Habedank's amendment.
10 You'd probably better ask that of him. I don't know what his
11 purpose is, but I do not find his purpose to be ulterior, as
12 far as I'm concerned.

13 DELEGATE HOLLAND: I know. May I ask Mr. Habedank
14 to yield to a question?

15 CHAIRMAN GRAYBILL: Mr. Habedank, will you yield?

16 DELEGATE HABEDANK: I yield.

17 DELEGATE HOLLAND: I don't understand why you want
18 the limitation of just injury to a person. I'm not talking
19 about the property rights because -- it would seem to me that
20 it might put into some question about survivor's rights, for
21 instance, wife's rights, children's rights, state's rights--
22 all of those things which could arise from injuries which ul-
23 timately result in the death of the person injured.

24 DELEGATE HABEDANK: I believe injuries to a person
25 which result in death are covered by our survivor's statutes

1 as they are in existence now. This provides that there shall
2 be no special immunity for injury to a person or property and
3 I believe it would allow the same survival situation that ex-
4 ists before. It certainly was not my objective to eliminate
5 that, but I think there are many instances where there may be
6 some governmental employees do some things in connection with
7 contractual fields that we try to stick the government for
8 where there is a good reason to maintain our governmental im-
9 munity in those situations.

10 CHAIRMAN GRAYBILL: Mr. Schiltz.

11 DELEGATE SCHILTZ: Mr. Chairman, for Mr. Holland's
12 information, I suggest -- or, I offer that the supreme court
13 has held that survivor action is a property right, subject to
14 a two-year limitation, statute of limitations, as opposed to a
15 three-year personal injury and I think that property right
16 would take care of the problem they're talking about.

17 CHAIRMAN GRAYBILL: Is there further discussion of
18 Mr. Habedank's proposed amendment.

19 (No response)

20 CHAIRMAN GRAYBILL: Very well, the issue is on Mr.
21 Habedank's amendment which would add to section eighteen at
22 line twenty, at the end of the line, a comma and then the
23 words: for injury to a person or property, so that the sentence
24 read: The state and its subdivisions shall have no special
25 immunity from suit for injury to a person or property, period.

1 So many as shall be in favor of Mr. Habedank's amendment, say
2 Aye.

3 DELEGATES: Aye.

4 CHAIRMAN GRAYBILL: Opposed, No.

5 DELEGATES: (No audible response)

6 CHAIRMAN GRAYBILL: The Ayes have it and it's adopt-
7 ed. Is there other discussion of section seventeen? Section
8 eighteen it is, excuse me.

9 Mr. Rygg.

10 DELEGATE RYGG: I'd like to ask Mr. Murray a ques-
11 tion if I may.

12 CHAIRMAN GRAYBILL: Mr. Murray, would you yield?

13 DELEGATE MURRAY: I yield.

14 DELEGATE RYGG: I'm just wondering, having been on
15 the appropriations committee before, how is the state going to
16 protect itself? Do you figure just a -- do they buy insurance
17 now and take care of this? Is that what --

18 DELEGATE MURRAY: In most instances they have insur-
19 ance to cover this particular thing. One problem that you
20 might have would be with respect to the -- I think of the
21 highway department as a classic example of where they might
22 not have insurance to cover a road defect, or their failure
23 to cure some problem with respect to the highway which might
24 lead or be such negligence as would cause an accident, and in
25 those particular respects they are not now covered by liability

1 insurance and you cannot sue them, and I think that if we want
2 to build into this state safe highways and make sure that our
3 maintenance work is done properly, and that they do not expose
4 the citizens of Montana and elsewhere--the tourists who come
5 into this state--to various situations which might damage or
6 injure them, that we've got to put the pressure on them of
7 suffering the possibility of a law suit because this makes them
8 responsible to us.

9 DELEGATE RYGG: One further question, if I may.

10 CHAIRMAN GRAYBILL: Yes, Mr. Rygg.

11 DELEGATE RYGG: Do you anticipate this to -- extra
12 insurance to cost the state a great deal of money?

13 DELEGATE MURRAY: No, I really don't, Sterling.

14 CHAIRMAN GRAYBILL: Is there other discussion of
15 section eighteen as amended?

16 Mr. Garlington.

17 DELEGATE GARLINGTON: I want, Mr. Chairman, to raise
18 the question of what is the proper interpretation to be given
19 to the words, state and its subdivisions. I have reference
20 to local government units and school districts and it seems
21 to me that this language does not very clearly point to any
22 particular area and we, therefore, are building up controversy
23 as to how far this immunity extends, and I think we would have
24 an obligation in this body so to construct our language that
25 we do not create an ambiguity, litigation if we can help it.

1 CHAIRMAN GRAYBILL: Do any of the committee care to
2 speak to that matter?

3 (No response)

4 CHAIRMAN GRAYBILL: Very well, Mr. Wilson.

5 DELEGATE WILSON: Can I ask Mr. Murray a question?

6 DELEGATE MURRAY: I yield.

7 DELEGATE WILSON: Mr. Murray, don't you feel that
8 this is perhaps more statutory than constitutional?

9 DELEGATE MURRAY: Well, I guess that North Dakota
10 felt it must be constitutional and I have been hearing a lot
11 about North Dakota, so I defer to their wisdom in that respect.
12 No, I feel it's a constitutional thing.

13 DELEGATE WILSON: Would then -- would this then
14 apply, if I may ask another question --

15 CHAIRMAN GRAYBILL: Go ahead, Mr. Wilson.

16 DELEGATE WILSON: Would this apply then to all pol-
17 itical subdivisions, as Mr. Garlington has raised the ques-
18 tion, such as school districts, school boards, and so forth.

19 DELEGATE MURRAY: Well, it is my understanding that
20 it is, I think, the intent of the committee that its applica-
21 tion shall be to all political subdivisions of the state of
22 Montana, whatever they might be.

23 DELEGATE WILSON: Then this would cover -- would
24 affect fire departments?

25 DELEGATE MURRAY: I think so.

1 DELEGATE WILSON: Law enforcement agencies?

2 DELEGATE MURRAY: I think so. Cities, towns, irri-
3 gation districts--anything which might come within the doctrine
4 of sovereign immunity. We are now trying to get rid of that
5 doctrine of sovereign immunity.

6 DELEGATE WILSON: May I ask another question, Mr.
7 Chairman?

8 CHAIRMAN GRAYBILL: Yes, Mr. Wilson.

9 DELEGATE MURRAY: I yield.

10 DELEGATE WILSON: Mr. Murray, you said it wouldn't
11 cost very much. Isn't this kind of compulsory insurance?
12 Would it cost a great deal of money?

13 DELEGATE MURRAY: Well, Mr. Wilson, I can't answer
14 you in that respect because I'm not familiar with the cost of
15 insurance. The situations in which the doctrine of sovereign
16 immunity have been invoked in the state of Montana, I don't
17 suppose have been many, and I doubt very much if there really
18 will be a great increase in insurance premiums as a result of
19 this change. There may be some. To what extent, I can't
20 answer.

21 DELEGATE WILSON: Thank you, Mr. Murray.

22 CHAIRMAN GRAYBILL: Mr. Wilson, the Chair would
23 observe that many governmental units carry insurance now in
24 spite of the doctrine of sovereign immunity.

25 Mr. Anderson.

1 DELEGATE OSCAR ANDERSON: Would Mr. Murray yield to
2 a question?

3 CHAIRMAN GRAYBILL: Mr. Murray?

4 DELEGATE MURRAY: I will yield.

5 DELEGATE OSCAR ANDERSON: Would you or your commit-
6 tee object to the legislature providing reasonable limitations?

7 DELEGATE MURRAY: I beg your pardon?

8 DELEGATE OSCAR ANDERSON: Would you or your commit-
9 tee object to the addition of the word, the legislature may
10 provide for reasonable limitations?

11 DELEGATE MURRAY: I don't think we would object to
12 that particularly. That's in the North Dakota constitution,
13 is it not?

14 DELEGATE OSCAR ANDERSON: Yes.

15 DELEGATE MURRAY: The one that Mr. Wenstrom sent
16 you?

17 (Laughter)

18 DELEGATE OSCAR ANDERSON: Mr. Chairman.

19 CHAIRMAN GRAYBILL: Yes, Mr. Anderson.

20 DELEGATE OSCAR ANDERSON: Being a non-lawyer, I'm
21 not going to make a motion but I sure wish somebody else
22 would.

23 CHAIRMAN GRAYBILL: Mr. Dahood.

24 DELEGATE DAHOOD: Mr. Chairman, I think we should
25 point out that there might be some question with respect to

1 the extent of the language, the state and its subdivisions.
2 I think Delegate Garlington does bring up a point. What our
3 committee is really concerned about is making sure that an
4 antiquated doctrine that had no place within American juris-
5 prudence in the first instance, is removed from the face of
6 justice in the state of Montana. The federal government did
7 it quite some years ago. They passed the federal tort claims
8 act to cover any negligent activity by any servant of the fed-
9 eral government, and they passed the Tucker act to make sure
10 that in contract matters this particular defense of sovereign
11 immunity, which should have no place in a democracy, could
12 not be used against someone that was entitled to have full
13 justice and full legal redress. The way the situation stands
14 in the state of Montana at the present time, unless there is
15 some type of insurance coverage, a governmental servant could
16 run you down in the street, be drunk at the time he does it,
17 go through a red stop light, and you can't recover a dime for
18 your hospital and medical bills and for the support of your-
19 self and your family during your disability. Now, surely, no
20 sound-thinking individual can say that that is right. And the
21 intent of the committee is to make sure that in Montana we
22 take it away by constitutional command. In the last several
23 decades, sixteen states have done it through supreme court
24 decisions. Several have done it through constitutional amend-
25 ment. There isn't a legal scholar that I have read over the

1 past two decades of practicing law, and I'm sure my colleagues
2 here on Convention floor will agree, that can justify the re-
3 tention of that particular doctrine that the king can do no
4 wrong in Montana and in any of the states of this particular
5 democracy. So, it is our intention to remove this particular
6 doctrine because the supreme court, when it has been confront-
7 ed with this particular issue, has said, well, we have had it
8 all these years and we don't want to remove it. Let the leg-
9 islature do it. The legislature will come back and say, well,
10 let the supreme court do it because after all, we didn't
11 construct this doctrine--the courts did it years back when they
12 paid so much homage to the law of England that they thought
13 they had to bring it over the sea here to the North American
14 continent. So they keep passing the responsibility back and
15 forth. We have an opportunity now, as long as in Montana no
16 one else will accept it, to make sure that we have full redress
17 and full justice for all of our citizens so that way we reduce
18 public dissatisfaction with the administration of justice and
19 make sure that every citizen of Montana has the full right to
20 which he is entitled. We submit it's an inalienable right to
21 have remedy when someone injures you through negligence and
22 through wrong-doing, regardless of whether he has the status
23 of a governmental servant or not. That is the committee ex-
24 planation. We think that if it is adopted in the language in
25 which it is submitted, that it's going to tell our supreme

1 court we do not want that doctrine in the state of Montana.
2 Let's judge cases on the merit, on the principle of what's
3 fair and what's right between man and woman in an organized
4 society. We submit the present language will convey that mes-
5 sage. That will be our epistle to justice in the state of
6 Montana and will improve its administration for the benefit
7 of all of us. Thank you, Mr. Chairman.

8 CHAIRMAN GRAYBILL: The question arises on Mr. Mur-
9 ray's motion that when this body arises and reports, after
10 having had under consideration section eighteen, as amended,
11 that the same shall be recommended for adoption. So many as
12 are in favor of that motion say Aye.

13 DELEGATES: Aye.

14 CHAIRMAN GRAYBILL: Opposed, No.

15 DELEGATES: No.

16 CHAIRMAN GRAYBILL: The Ayes have it and it's adopt-
17 ed. Will the Clerk read section nineteen?

18 CLERK SMITH: (Reading) Section nineteen - Habeas
19 Corpus: The privilege of the writ of habeas corpus shall
20 never be suspended. (End reading) Section nineteen, Mr.
21 Chairman.

22 CHAIRMAN GRAYBILL: Mr. Hanson.

23 DELEGATE R. S. HANSON: I move that when this com-
24 mittee does arise and report, having had under consideration
25 section nineteen of proposal number eight, it recommend the

1 same be adopted.

2 Mr. President.

3 CHAIRMAN GRAYBILL: Mr. Hanson.

4 DELEGATE R. S. HANSON: The present language is
5 shown in our Bill of Rights. The privilege of the writ of
6 habeas corpus shall never be suspended. In the present sec-
7 tion, number twenty-one, we have deleted the words: unless in
8 case of rebellion or invasion the public safety requires it.
9 The committee felt that we would be accomplishing what we
10 wanted to by cutting out the last words. We hope that you
11 will move for the amendment -- or the adoption of this section.

12 CHAIRMAN GRAYBILL: Mr. Johnson.

13 DELEGATE JOHNSON: Mr. Chairman, I feel I especially
14 have to rise in support of this section nineteen. The cowboys
15 down in Powder River country just love those words habeas
16 corpus.

17 (Laughter)

18 CHAIRMAN GRAYBILL: Those cowboys are learning a
19 lot of new language, too, aren't they Torrey?

20 (Laughter)

21 CHAIRMAN GRAYBILL: All right, is there discussion
22 of section nineteen?

23 (No response)

24 CHAIRMAN GRAYBILL: Members of the committee, you
25 have before you, on the motion of Mr. Hanson, that when this

1 committee does arise and report, after having had under con-
2 sideration section nineteen, that it recommend the same do --
3 the same be adopted. All in favor of section nineteen, say
4 Aye.

5 DELEGATES: Aye.

6 CHAIRMAN GRAYBILL: Opposed, No.

7 DELEGATES: (No audible response)

8 CHAIRMAN GRAYBILL: Section nineteen is adopted.

9 Will the Clerk read section twenty?

10 CLERK SMITH: (Reading) Section twenty - Initiation
11 of Proceedings: Criminal offenses of which courts inferior to
12 the district courts have jurisdiction shall be prosecuted by
13 complaint. All criminal actions in district court, except
14 those on appeal, shall be prosecuted by information, after
15 examination and commitment by a magistrate, or after leave
16 granted by the court, or shall be prosecuted by indictment
17 without such examination or commitment, or without such leave
18 of the court. A grand jury shall consist of seven persons,
19 of whom five must concur to find an indictment. A grand jury
20 shall only be drawn and summoned when the district judge shall,
21 in his discretion, consider it necessary, and shall so order.
22 (end reading) Section twenty, Mr. Chairman.

23 CHAIRMAN GRAYBILL: Mr. Hanson.

24 DELEGATE R. S. HANSON: Mr. Chairman, I move that
25 when this committee does rise and report, having had under

1 consideration section twenty of proposal number eight, it
2 recommend the same be adopted.

3 Mr. Chairman.

4 CHAIRMAN GRAYBILL: Mr. Hanson.

5 DELEGATE R. S. HANSON: In this section there have
6 been a few changes in words. They are almost identical to
7 our present section eight and the committee voted unanimously
8 that this section, which stipulates the method of initiating
9 criminal proceedings should remain as is with one minor change.
10 The phrase, justice's courts and municipal and other courts,
11 was deleted as unnecessary and redundant wording. The remain-
12 der of the section is the verbatim rendering of the article
13 three, section eight, providing for prosecutions by complaint,
14 information and inductment. It is noted that these fixed
15 aspects of the initiation of proceedings are part of the basic
16 procedural rights framework established to maintain the ac-
17 cusatorial nature of the system of criminal justice. No
18 delegate proposals were received on this provision.

19 CHAIRMAN GRAYBILL: Mr. Melvin, you have an amend-
20 ment. Do you want the Clerk to read it?

21 DELEGATE MELVIN: If you please, Mr. Chairman.

22 CHAIRMAN GRAYBILL: Mr. Clerk, will you please read
23 Mr. Melvin's amendment?

24 CLERK SMITH: (Reading) Mr. Chairman, I move to
25 amend the Bill of Rights Committee proposal, section twenty,

1 page thirty-five, line nine, by deleting the word, seven, and
2 inserting the word, eleven; and on line ten by deleting the
3 word, five, and inserting the word, eight. Signed, Melvin.

4 CHAIRMAN GRAYBILL: Mr. Melvin has an amendment to
5 section twenty which appears on page eight. He wants to
6 change the numbers of the grand jury so that they are eleven
7 and eight must concur in the indictment.

8 Mr. Melvin.

9 DELEGATE MELVIN: Mr. Chairman and Delegates, the
10 sole purpose of the amendment is to increase the number of
11 grand jurors so that a better chance of the jury arriving at
12 some strong leadership and perform the function which they
13 are chosen to do. Now, in seventeen years I have observed the
14 two grand juries perform in my particular area--one with re-
15 gard to a police scandal; the other involved two murders.
16 Especially with regard to the police scandal, that grand jury
17 performed very well and information was obtained during that
18 grand jury hearing that would not otherwise have been obtained.
19 Now, for the layman, I think that it's been so seldom that
20 grand juries have been used in Montana that you should be
21 aware that a grand jury is called only at the request of a
22 district judge. They assemble at the county seat and their
23 powers are broad. They are described in chapter fourteen of
24 the Montana Codes and they can go into all areas of county and
25 city government and functions of the county offices, as well

1 as specific crimes. I'll not belabor the point other than to
2 point out that it's because of the fact that I feel that from
3 eleven people that stronger leadership could be obtained to
4 conduct this function that I'm asking for this amendment.
5 Thank you, Mr. Chairman.

6 CHAIRMAN GRAYBILL: Mr. Hanson.

7 DELEGATE R. S. HANSON: Mr. Chairman, I don't think
8 that the committee has any reason to oppose this amendment but
9 I'd like to have Mr. Dahood speak on it for a minute.

10 CHAIRMAN GRAYBILL: Mr. Dahood.

11 DELEGATE DAHOOD: Mr. Chairman, Delegate Melvin was
12 gracious enough to discuss this with me and he has had exper-
13 ience with a grand jury in the state of Montana and I daresay
14 there are very few lawyers on this Convention floor that have
15 had any experience with it. Let me tell you why. In the fed-
16 eral courts under the federal system of justice, before any-
17 one can be charged with any serious crime or a felony type of
18 crime, it must be upon presentment to the grand jury and the
19 return of a true bill. In Montana we have an alternative
20 provision whereby the prosecuting officer can file against an
21 individual and accuse him of a felony type crime by what we
22 call an information, although we do have a grand jury proce-
23 dure that is almost never used. So it has come down to this
24 in the state of Montana. A grand jury is used on rare occas-
25 ions when some matter of great concern to the community has

1 arisen and there is some question as to what action should be
2 taken by the county prosecutor, and upon request to the pre-
3 siding judge of that particular district, a grand jury may be
4 called. It is seldom ever done, and since we have the exper-
5 ience of Delegate Melvin with respect to two grand juries that
6 were called in the eighteenth judicial district, and he believes
7 that a larger number should serve in that particular instance,
8 we certainly will not quarrel with that opinion. I think there
9 is a rational basis for his amendment and I think having a
10 larger number in a matter of that type of pressing importance
11 certainly commends itself to us. I think it will serve the
12 purpose for calling a grand jury and for that reason, on be-
13 half of the Bill of Rights Committee, we have no objection to
14 the amendment as presented. Thank you, Mr. Chairman.

15 CHAIRMAN GRAYBILL: Very well, the issue arises on
16 Mr. Melvin's amendment that we insert in section twenty the
17 numbers eleven for a grand jury with the number of eight to
18 concur for the indictment. So many as shall be in favor of
19 that motion, please say Aye.

20 DELEGATES: Aye.

21 CHAIRMAN GRAYBILL: Opposed, No.

22 DELEGATES: (No audible response)

23 CHAIRMAN GRAYBILL: The Ayes have it and Mr. Melvin's
24 amendment is adopted. Is there other discussion of section
25 twenty?

1 (No response)

2 CHAIRMAN GRAYBILL: Very well, members of the com-
3 mittee, you have before you for your consideration Mr. Han-
4 son's motion that when this committee does rise and report,
5 after having had under consideration section twenty as amended,
6 that the same be recommended for adoption. All in favor of
7 that motion please say Aye.

8 DELEGATES: Aye.

9 CHAIRMAN GRAYBILL: Opposed, No.

10 DELEGATES: (No audible response)

11 CHAIRMAN GRAYBILL: It's adopted.

12 Mr. Murray.

13 DELEGATE MURRAY: Mr. Chairman, I move the committee
14 rise, report progress and ask leave to sit again.

15 CHAIRMAN GRAYBILL: Very well, the motion is to rise
16 and report progress. So many as are in favor of that motion
17 say Aye.

18 DELEGATES: Aye.

19 CHAIRMAN GRAYBILL: Opposed, No.

20 DELEGATES: (No audible response)

21 CHAIRMAN GRAYBILL: The committee will rise.

22

23 (Proceedings moved from Committee of the Whole
24 into Convention. President Graybill in Chair.)

25 PRESIDENT GRAYBILL: Will the Clerk please read the

1 Committee of the Whole report?

2 CLERK SMITH: (Reading) March 8, 1972. Mr. Pres-
3 ident, we your committee of the whole, having had under con-
4 sideration report number eight of the Committee on Bill of
5 Rights, recommend that the committee rise and report progress
6 and beg leave to sit again. Signed, Graybill, chairman.

7 PRESIDENT GRAYBILL: Members of the committee, un-
8 less objection is heard, we will not read the entire report.

9 Mr. Murray.

10 DELEGATE MURRAY: Mr. Chairman, I move the Conven-
11 tion adopt the Committee of the Whole report.

12 PRESIDENT GRAYBILL: The motion is to adopt the
13 Committee of the Whole report. All in favor say Aye.

14 DELEGATES: Aye.

15 PRESIDENT GRAYBILL: Opposed, No.

16 DELEGATES: (No audible response)

17 PRESIDENT GRAYBILL: So ordered. May we be on
18 Order of Business Number Eleven, Announcements.

19 Mr. Champoux.

20 DELEGATE CHAMPOUX: Education Committee tomorrow
21 morning, please, at 8:30 in the committee room. Thank you.

22 PRESIDENT GRAYBILL: Oh, I'm trying to remember what
23 it is that Mrs. Babcock wants me to announce. It's that women
24 who might be interested in attending the prayer luncheon on
25 Saturday should make arrangements for that. The prayer break-

1 fast starts at such a late hour that we would have to abandon
2 Saturday morning, but the prayer luncheon will start at noon
3 and we will probably work until at least noon or a little past
4 on Saturday and give anyone who wants to go to that until
5 around one-thirty, so you probably can attend the prayer lun-
6 cheon if you want to. The prayer breakfast would take from
7 nine to eleven and we'll be in session at that time. So, if
8 you're interested in the prayer luncheon, please make your
9 arrangements. Are there other announcements? The Chair would
10 like to invite you all to still come to dinner tonight. Mr.
11 Murray, do you have another motion?

12 DELEGATE MURRAY: Mr. President, I move that the
13 Convention adjourn until the hour of nine A.M., March 9, 1972.

14 PRESIDENT GRAYBILL: The motion is to adjourn until
15 nine tomorrow morning. All in favor say Aye.

16 DELEGATES: Aye.

17 PRESIDENT GRAYBILL: Opposed, No.

18 DELEGATES: (No audible response)

19 PRESIDENT GRAYBILL: So ordered.

20

21 (Convention adjourned at 5:05 P.M.)

22

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24

25

1 MONTANA CONSTITUTIONAL CONVENTION

2 March 9, 1972 41st Convention Day Convention Hall
3 9:14 o'clock A.M. Helena, Montana
4

5 PRESIDENT GRAYBILL: The Convention will be in order.
6 If you will all rise, Mr. Harper will lead us in the Invocation
7 this morning.

8 DELEGATE HARPER: There's a familiar passage of
9 scripture that says, this is the day that the Lord has made;
10 let us rejoice in it and be glad. Let us Pray. Our Father,
11 let us live this day in the knowledge that it may be the only
12 day that we have here. Let this be the day when our wishes
13 are in accord with your will. Let this be the day when we
14 measure ourselves not against each other, nor even against
15 ourselves of the past, but against the measuring rod of human-
16 ity we saw in Jesus. Stand us up against the needs and the
17 possibilities of future generations until we see our own lives
18 here in proper perspective and are made humble enough to
19 serve, and confident enough to rejoice in this the day you
20 have made for us together, Amen.

21 PRESIDENT GRAYBILL: We'll take attendance this
22 morning by voting Aye on the voting machines.

23 CLERK HANSON: Mr. President. May Delegates Bowman,
24 Cate, Garlington, Mahoney be excused please, and Delegate
25 Furlong?

1 PRESIDENT GRAYBILL: Very well. Furlong does not
2 need to be excused yet. Those other delegates are in Great
3 Falls for the television show. Are there other absences?

4 CLERK HANSON: Delegate Anderson, Delegate Artz,
5 Delegate Bates, Delegate Dahood, Delegate Holland, Delegate
6 McKeon, Delegate Anderson, Delegate Bates, Delegate Dahood,
7 Delegate Holland, Delegate McKeon.

8 PRESIDENT GRAYBILL: Very well. Will you take the
9 attendance?

10	Aasheim	-	Present	Bowman	-	Excused
11	Anderson, J.	-	Present	Brazier	-	Present
12	Anderson, O.	-	Absent	Brown	-	Present
13	Arbanas	-	Present	Bugbee	-	Present
14	Arness	-	Present	Burkhardt	-	Present
15	Aronow	-	Present	Cain	-	Present
16	Artz	-	Present	Campbell	-	Present
17	Ask	-	Present	Cate	-	Excused
18	Babcock	-	Present	Champoux	-	Present
19	Barnard	-	Present	Choate	-	Present
20	Bates	-	Absent	Conover	-	Present
21	Belcher	-	Present	Cross	-	Present
22	Berg	-	Present	Dahood	-	Absent
23	Berthelson	-	Present	Davis	-	Present
24	Blaylock	-	Present	Delaney	-	Present
25	Blend	-	Present	Driscoll	-	Present

1	Drum	- Present	Kelleher	- Present
2	Eck	- Present	Leuthold	- Present
3	Erdmann	- Present	Loendorf	- Present
4	Eskildsen	- Present	Lorello	- Present
5	Etchart	- Present	Mahoney	- Excused
6	Felt	- Present	Mansfield	- Present
7	Foster	- Present	Martin	- Present
8	Furlong	- Present	McCarvel	- Present
9	Garlington	- Excused	McDonough	- Present
10	Graybill	- Present	McKeon	- Absent
11	Gysler	- Present	McNeil	- Present
12	Habedank	- Present	Nelvin	- Present
13	Hanson, R. S.	- Present	Monroe	- Present
14	Hanson, R.	- Present	Murray	- Present
15	Harbaugh	- Present	Noble	- Present
16	Harlow	- Present	Nutting	- Present
17	Harper	- Present	Payne	- Present
18	Harrington	- Present	Pemberton	- Present
19	Heliker	- Present	Rebal	- Present
20	Holland	- Absent	Reichert	- Present
21	Jacobsen	- Present	Robinson	- Present
22	James	- Present	Roeder	- Present
23	Johnson	- Present	Rollins	- Present
24	Joyce	- Present	Romney	- Present
25	Kamhoot	- Present	Rygg	- Present

1	Scanlin	- Present	Swanberg	- Present
2	Schiltz	- Present	Toole	- Present
3	Siderius	- Present	Van Buskirk	- Present
4	Simon	- Present	Vermillion	- Present
5	Skari	- Present	Wagner	- Present
6	Sparks	- Present	Ward	- Present
7	Speer	- Present	Warden	- Present
8	Studer	- Present	Wilson	- Present
9	Sullivan	- Present	Woodmansey	- Present

10 CLERK HANSON: Mr. Chairman, ninety-one Delegates
11 present, four excused and five absent.

12 PRESIDENT GRAYBILL: Very well. A quorum is present.
13 The journal may so show. Order of Business Number One.

14 CLERK HANSON: Mr. President. We, the Committee on
15 Style and Drafting, Transition and Submission transmits
16 revisions of the judiciary article for consideration of the
17 convention. John M. Schiltz, Chairman, William A. Burkhardt,
18 Vice Chairman.

19 PRESIDENT GRAYBILL: The judiciary article is before
20 you on your desks from Style and Drafting. I might point out
21 to you that it is very possible that we would get to that
22 this afternoon and we might want to waive the time. So, if
23 you have any time at noon, you might want to look at the
24 judiciary article on Style and Drafting. We may be getting
25 to that before tomorrow. Order of Business Number Two, Reports

1 of Select Committees?

2 CLERK HANSON: None.

3 PRESIDENT GRAYBILL: Order of Business Number Three,
4 Communications?

5 CLERK HANSON: Helena, Montana, March 8, 1972,
6 Honorable Leo Graybill, Jr., President, Montana Constitutional
7 Convention, Capitol, Helena, Montana Dear Mr. President:
8 In accordance with the provisions of Section 15 (2) Extraordin-
9 ary Senate Bill Number Six, Chapter Extraordinary Number One,
10 Laws of Montana 1971, the license of Joel L. Curtis, license
11 number 84-72 has been reinstated as of March 8, 1972. Sincere-
12 ly yours, Frank Murray, Secretary of State. Mr. President.

13 PRESIDENT GRAYBILL: Order of Business Number Four,
14 Introduction and Reference of Delegate Proposals?

15 CLERK HANSON: None.

16 PRESIDENT GRAYBILL: Order of Business Number Five.
17 Mr. Murray.

18 DELEGATE MURRAY: Mr. President. I move that we
19 postpone consideration of business under Order of Business
20 Number Five until the convention again reaches that Order of
21 Business, which I hope will be later in the day. At that
22 time, we should have the legislative, final little typewritten
23 report for us so we'll know finally what we're voting on. We
24 can take up General Government One and Two and Legislative.

25 PRESIDENT GRAYBILL: Members of the convention, the

1 Chair is advised that the legislative reprint has not yet
2 reached your desks, but it is due and we expect it this morn-
3 ing. We'd rather do all of those at once. All those in favor
4 of Mr. Murray's motion to pass Order of Business Number Five,
5 say Aye.

6 DELEGATES: Aye.

7 PRESIDENT GRAYBILL: Opposed, No.

8 (No response)

9 PRESIDENT GRAYBILL: So ordered. Order of Business
10 Number Six, Adoption?

11 CLERK HANSON: None.

12 PRESIDENT GRAYBILL: Order of Business Number Seven,
13 Motions?

14 Mr. Rygg.

15 DELEGATE RYGG: Mr. Chairman. I move that this con-
16 vention request from the Department of Revenue a fiscal note
17 forecasting the cost of added services to be performed by
18 state and local government as included in the first eight
19 proposals. Mr. Chairman.

20 PRESIDENT GRAYBILL: Mr. Rygg.

21 DELEGATE RYGG: I have no other motive for this
22 other than my own curiosity. I guess I feel somewhat the same
23 as if my wife and I had both been on a trip, and we had been
24 spending a lot of counter checks, and now it's time to go
25 down to the bank to see if they would add them up for me.

1 PRESIDENT GRAYBILL: Very well. The Chair under-
2 stands the sense of Mr. Rygg's motion to be that he'd like to
3 ask the state fiscal people for a fiscal note as to what may
4 be the results of what we've done so far in the convention.
5 If you pass this motion that we ask for that, it is the Chair's
6 intention to refer the matter to resolutions -- the rules and
7 resolutions -- so that the Rules Committee can draw an appro-
8 priate resolution to the state agencies so that they will act
9 on more than just our motion. But, if you agree with Mr. Rygg
10 that we should ask them for a fiscal note, vote Yes. If you
11 don't agree, vote No and we'll put his motion. Is there dis-
12 cussion?

13 Mr. Holland.

14 DELEGATE HOLLAND: Mr. Chairman. Will the roll
15 please show me as present?

16 PRESIDENT GRAYBILL: The roll will please show Mr.
17 Holland as present, and will the roll also show Mr. McKeon
18 as present? Mr. Dahood is also present.

19 Mr. Champoux.

20 DELEGATE CHAMPOUX: Mr. President. Who, specifically,
21 are we going to direct this inquiry to?

22 PRESIDENT GRAYBILL: Mr. Rygg

23 DELEGATE RYGG: The Department of Revenue. The
24 reason for putting it in the Department of Revenue is that
25 they have the personnel over there who are able to do this.

1 It's quite a normal procedure in the legislature for every
2 bill that needs an appropriation that we have a fiscal note,
3 and they come back with a figure. I admit that they can't
4 always give you the proper figure. They'll have to say, well
5 if you have a hundred members, it's going to be less than if
6 you have a hundred and fifty. Usually, they're pretty good
7 about putting down there the approximate reasons for it and
8 giving an alternative of what it will be. So, it would just
9 be to the Department of Revenue and I believe they have a
10 staff who can adequately do that.

11 PRESIDENT GRAYBILL: Are there other questions or
12 discussion? All in favor of asking the Department of Revenue
13 for a fiscal note on the results of our convention so far,
14 say Aye.

15 DELEGATES: Aye.

16 PRESIDENT GRAYBILL: Opposed, No.

17 (No response)

18 PRESIDENT GRAYBILL: The Ayes have it and the Chair
19 will refer the matter to the Rules and Resolutions Committee
20 and Mr. Rygg will work with them to work up a suitable resolu-
21 tion, which we can probably pass tomorrow and couch it in
22 language so that we can get this accomplished. Are there
23 other resolutions or motions?

24 CLERK HANSON: None, sir.

25 PRESIDENT GRAYBILL: Order of Business Number Eight,

1 Unfinished Business?

2 CLERK HANSON: None.

3 PRESIDENT GRAYBILL: Order of Business Number Nine,
4 Special Orders?

5 CLERK HANSON: None.

6 PRESIDENT GRAYBILL: Order of Business Number Ten.
7 Mr. Murray.

8 DELEGATE MURRAY: Mr. President. I move the conven-
9 tion resolve itself into Committee of the Whole for the con-
10 sideration of business under General Orders.

11 PRESIDENT GRAYBILL: Mr. Murray's motion is to re-
12 solve this convention into Committee of the Whole. All in
13 favor, say Aye.

14 DELEGATES: Aye.

15 PRESIDENT GRAYBILL: Opposed, No.

16 (No response)

17 PRESIDENT GRAYBILL: So ordered.

18 (Committee of the Whole)

19 CHAIRMAN GRAYBILL: Mr. Clerk.

20 CLERK HANSON: March 9, 1972. The following com-
21 mittee proposals are now on General Orders: Bill of Rights,
22 Education, Public Health, Local Government, General Govern-
23 ment, Style and Drafting Report Number Five. Mr. Chairman.

24 CHAIRMAN GRAYBILL: Very well. When we completed
25 our work yesterday afternoon, we had just completed section

1 twenty of the Bill of Rights, so we're on section twenty-one.
2 Will the clerk please read section twenty-one?

3 CLERK HANSON: (Reading) Section twenty-one, Bail.
4 All persons shall be bailable by sufficient securities, ex-
5 cept for capital offenses, when the proof is evident or the
6 presumption great. Mr. Chairman, section twenty-one.

7 CHAIRMAN GRAYBILL: All right. The word is sureties
8 in line nine.

9 Mr. Hanson.

10 DELEGATE HANSON: Mr. Chairman. I move that when
11 this committee does rise and report after having had under
12 consideration section twenty-one of the Bill of Rights number
13 eight, it recommend the same be adopted as amended. Mr.
14 Chairman.

15 CHAIRMAN GRAYBILL: Mr. Hanson.

16 DELEGATE HANSON: The committee voted unanimously
17 to retain this section unchanged. As it stands, the section
18 announces that all persons are bailable except in certain
19 capital offenses. No delegate proposals were received on
20 this provision.

21 CHAIRMAN GRAYBILL: Is there discussion of section
22 twenty-one? Very well. You've all heard the motion of Mr.
23 Hanson that this committee recommend the adoption of section
24 twenty-one. All in favor, say Aye.

25 DELEGATES: Aye.

1 CHAIRMAN GRAYBILL: Opposed, No.

2 (No response)

3 CHAIRMAN GRAYBILL: It's adopted. Will the clerk
4 read section twenty-two?

5 CLERK SMITH: (Reading) Section twenty-two, Ex-
6 cessive Sanctions: Excessive bail shall not be required, or
7 excessive fines imposed, or cruel and unusual punishments
8 inflicted. Section twenty-two, Mr. Chairman.

9 CHAIRMAN GRAYBILL: Mrs. Sullivan.

10 DELEGATE SULLIVAN: Mr. Chairman. I move that when
11 this committee does rise and report after having had under
12 consideration section twenty-two of Proposal Eight, it recom-
13 mends that the same be adopted. Mr. Chairman.

14 CHAIRMAN GRAYBILL: Mrs. Sullivan.

15 DELEGATE SULLIVAN: The committee voted unanimously
16 that this section be retained unchanged. It is thought that
17 the section provides the judiciary and the legislative ade-
18 quate flexibility to apply the principle that there shall not
19 be excessive bail, excessive fines or cruel and unusual punish-
20 ments. No delegate proposals were received on this provision.
21 Mr. Chairman.

22 CHAIRMAN GRAYBILL: Is there discussion of section
23 twenty-two? Members of the committee, you've heard Mrs.
24 Sullivan's recommendation that section twenty-two be adopted.
25 All in favor of that, say Aye.

1 DELEGATES: Aye.

2 CHAIRMAN GRAYBILL: Opposed, No.

3 (No response)

4 CHAIRMAN GRAYBILL: It's adopted. Will the clerk
5 read section twenty-three?

6 CLERK SMITH: (Reading) Section twenty-three,
7 Detention: No person shall be imprisoned for the purpose of
8 securing testimony in any criminal proceeding longer than
9 may be necessary in order to take his deposition. If he can
10 give security for his appearance at the time of trial, he
11 shall be discharged on giving the same. If he cannot give
12 security, his deposition shall be taken in the manner pre-
13 scribed by law and in the presence of the accused and his
14 counsel, or without their presence, if they shall fail to
15 attend the examination after reasonable notice of the time
16 and place thereof. Any deposition authorized by this section
17 may be received as evidence on the trial, if the witness shall
18 be dead or absent from the state. Section twenty-three, Mr.
19 Chairman.

20 CHAIRMAN GRAYBILL: Mr. Foster.

21 DELEGATE FOSTER: Mr. Chairman. I move that when
22 this committee does rise and report after having had under
23 consideration section twenty-three of the Bill of Rights
24 Proposal Number Eight, it recommends that the same be adopted.
25 Mr. Chairman.

1 CHAIRMAN GRAYBILL: Mr. Foster.

2 DELEGATE FOSTER: This section is exactly the same
3 as Article Three, section seventeen, in the present constitu-
4 tion. The provision prohibits unreasonable detention of wit-
5 nesses and prescribes in detail, the procedure for securing
6 testimony in the event the witness cannot be procured for the
7 trial. No delegate proposals were received on this particu-
8 lar section. Thank you, Mr. Chairman.

9 CHAIRMAN GRAYBILL: Mr. Habedank.

10 DELEGATE HABEDANK: Mr. President. Would Mr. Dahood
11 yield to a question?

12 CHAIRMAN GRAYBILL: Mr. Dahood?

13 DELEGATE DAHOOD: I yield, Mr. Chairman.

14 DELEGATE HABEDANK: In connection with section
15 twenty-three, Mr. Dahood, was any consideration given by your
16 committee to enlarging the use of the deposition so that it
17 could be used under circumstances where the witness would not
18 be absent from the state or dead? It appears to me that there
19 are many instances which would arise where a deposition has
20 been so taken, that the evidence is necessary and the witness
21 cannot be located. He may be ill or many other things.

22 DELEGATE DAHOOD: Mr. Habedank. That was discussed
23 to some extent, not any great extent, but we felt that the
24 Montana Civil Procedure Act would take care of that under
25 sections twenty-six through thirty-seven. We thought that the

1 deposition sections contained therein covered those situations
2 that you refer to now.

3 DELEGATE HABEDANK: May I ask Mr. Dahood another
4 question?

5 DELEGATE DAHOOD: I yield, Mr. Chairman.

6 DELEGATE HABEDANK: Did you consult with any pro-
7 secuting attorneys -- I have never been one -- as to whether
8 or not they have ever experienced difficulty because of the
9 limitation on the use of this deposition?

10 DELEGATE DAHOOD: Mr. Habedank. We did not consult
11 with any prosecuting attorneys. Again, we have the new
12 criminal code which we think, in certain sections, covers that
13 situation. We did not see that there was any particular reason
14 or need for any constitutional change. That is why we stayed
15 with the section as it is.

16 DELEGATE HABEDANK: Thank you, Mr. Chairman.

17 CHAIRMAN GRAYBILL: Is there other discussion?
18 Mr. Kelleher.

19 DELEGATE KELLEHER: I just delivered a proposed
20 amendment to the clerk, Mr. Chairman. It simply would strike
21 the last sentence, and I move to strike the last sentence of
22 section twenty-three starting at lines twenty-four through
23 twenty-six on page eight.

24 CHAIRMAN GRAYBILL: Do you want the clerk to read
25 your --

1 DELEGATE KELLEHER: I don't think so.

2 CHAIRMAN GRAYBILL: All right. Mr. Kelleher has an
3 amendment.

4 DELEGATE KELLEHER: Mr. Chairman.

5 CHAIRMAN GRAYBILL: Yes, just a minute until I write
6 it down here. You want to strike the last sentence?

7 DELEGATE KELLEHER: Only the last sentence.

8 CHAIRMAN GRAYBILL: The last sentence begins --

9 DELEGATE KELLEHER: Any deposition authorized by
10 this section may be received as evidence on a trial if the
11 witness shall be dead or absent from the state.

12 CHAIRMAN GRAYBILL: All right. Mr. Kelleher has
13 proposed an amendment to section twenty-three which would
14 strike the last sentence from the language of section twenty-
15 three. Any deposition authorized by this section may be
16 received as evidence on a trial if the witness shall be dead
17 or absent from the state.

18 Mr. Kelleher.

19 DELEGATE KELLEHER: The reason -- the primary reason
20 for striking this, Mr. Chairman, is that I believe it clearly
21 violates section -- Amendment Six -- of the Federal Constitu-
22 tion which, as you know, has been incorporated into Article
23 Fourteen. The matter is well covered under section 95-1802.
24 In fact, I think the whole section is constitutional, but it
25 is a rather important matter so I did not move to strike the

1 whole section. On page one seventy-one of the Bill of Rights
2 Committee's own report -- the very fine work done by Mr.
3 Applegate -- he points out the fact that in Pointer vs. Texas,
4 a 1965 case, the Sixth Amendment was put in the Fourteenth
5 Amendment and, of course, that was written many years after
6 our original constitution was drafted, that the government
7 cannot use such a deposition. The deposition may be used by
8 the defendant. We could amend to allow that in the last
9 sentence, but that's already included in our statutes so I
10 see no need for it. This is very similar to Rule Fifteen of
11 the Federal Rules of Criminal Procedure and in Moore's Federal
12 Practice, the commentary reads: The government has no right
13 to move to take a deposition under Rule Fifteen. The use of
14 depositions in criminal cases has always raised questions of
15 possible infringement of a defendant's Sixth Amendment right
16 to confront witnesses against him. This was no doubt the
17 reason for the Supreme Court's rejection of the original
18 advisory committee's proposal to permit government depositions
19 as well as for the rejection of a similar provision contained
20 in a proposed amendment. I realize, as I said, that it's in
21 the present constitution, but that portion of it was declared
22 unconstitutional. If the committee wants to allow the de-
23 fendant, as it is in the Federal Rule, to use these depositions,
24 I have no objection to that, so long as the government in a
25 prosecution cannot use the deposition because of the Sixth

1 Amendment. That matter, incidentally, is covered in the com-
2 mittee's following section twenty-four on the fourth line at
3 the bottom of page eight where we read: To meet the witnesses
4 against him face to face. Even though the deposition has been
5 taken, the criminal defendant still has a right to have the
6 jury examine his demeanor on the witness stand. Thank you.

7 CHAIRMAN GRAYBILL: Mr. Dahood.

8 DELEGATE DAHOOD: Mr. Chairman. We do not object
9 to the motion by Delegate Kelleher, but I think I should ex-
10 plain some of the problems that have been discussed for the
11 benefit of the nonlawyer delegates. The word deposition simply
12 means that you take the testimony of a witness, under oath,
13 before a court reporter, and then that testimony is transcribed.
14 When you have a material witness, who is absolutely essential
15 to the case for the state or the prosecution, it sometimes
16 becomes necessary to preserve that testimony for the benefit
17 of the state, by taking what is called a deposition. Again,
18 nothing more or less than the testimony of that witness, under
19 oath, by question and answer. The Montana Criminal Code is
20 going to protect the defendant because that deposition can
21 only be taken upon proper notice. One of the bulwarks of
22 liberty under our system of law, is the right of the defendant
23 to confront the witness who may stand against him, and through
24 his counsel, to cross-examine that witness. That right is
25 provided when a deposition is taken. In other words, the state

1 is represented by the prosecuting attorney, the questions are
2 asked of that particular witness. Those questions are written
3 down by the court reporter, as well as the answers, and then
4 the attorney on behalf of the defendant will ask questions
5 and they are written down along with the answers. Any object-
6 ions with respect to any questions that may be wrong, are
7 then decided by the judge at a later time. Since these mat-
8 ters are covered within our Montana Criminal Code, and with
9 respect to any other matter that may relate to any civil
10 procedure also covered by the Montana Civil Procedure Code,
11 there is really no problem. The constitutional guarantees
12 are going to be applied. We did not take that sentence out
13 because we were quite concerned about making sure that, wherev-
14 er we could, we left the basic rights of the people in the same
15 language in which they were framed in 1889 where the language
16 was still correct and was still proper and was still reflective
17 of society's current needs to have these particular rights in
18 the Bill of Rights. With that explanation, I again state that
19 the Bill of Rights Committee has no objection to the amendment
20 to delete as proposed by Delegate Kelleher. Thank you, Mr.
21 Chairman.

22 CHAIRMAN GRAYBILL: Mr. Dahood. I wonder if you'd
23 yield to a question from the Chair.

24 DELEGATE DAHOOD: I do yield.

25 CHAIRMAN GRAYBILL: On line twenty-one, it says -- it

1 says in line twenty that the deposition of such a witness must
2 be taken in the presence of the accused or his counsel, or
3 without their presence if they should fail to attend the exam-
4 ination after reasonable notice of the time and place thereof.
5 Then, down in your next section -- section twenty-four -- it
6 says to meet the witnesses against him face to face. Assuming
7 a situation where a person might be charged but not yet ap-
8 prehended, would you expect this person to come in and appear
9 for the deposition? If you don't really expect that, how are
10 you going to let him meet the witnesses face to face? In
11 other words, I'm bothered by Mr. Kelleher's point that in some
12 cases, the defendant -- it isn't just a matter of notice like
13 in a civil case. This defendant may have good reason not to
14 appear and yet he wouldn't be able to meet his accuser face
15 to face as you are requiring in the next section.

16 DELEGATE DAHOOD: In my judgment, Mr. Chairman, I
17 think it is absolutely essential that the person against whom
18 that deposition is to be used, does appear under circumstances
19 where he is before the court under process of court. I should
20 think that in the situation that you have just stated, that
21 that particular defendant is not yet under the control of the
22 court by effective service of process, and therefore in my
23 judgment, he would not be bound by any deposition taken under
24 those circumstances.

25 CHAIRMAN GRAYBILL: That may be but that doesn't

1 appear to me from lines twenty-two and twenty-three.

2 DELEGATE DAHOOD: That would be my opinion. The
3 only time you can use a deposition is when there has been
4 fair process, just process, due process with respect to that
5 defendant. There's some technical reason as to why he is
6 not within the power and jurisdiction of the court because he
7 has not been arrested and arraigned. Under those circumstances,
8 I do not think that this particular type of deposition pro-
9 cedure can be effective against him. That is our thinking
10 and my thinking, Mr. Chairman. Thank you.

11 CHAIRMAN GRAYBILL: Is there other discussion of
12 Mr. Kelleher's amendment to section twenty-three?

13 Mr. McDonough.

14 DELEGATE McDONOUGH: Mr. Chairman, could I ask Mr.
15 Dahood a question?

16 CHAIRMAN GRAYBILL: Mr. Dahood.

17 DELEGATE McDONOUGH: Mr. Dahood. Would the last
18 sentence be construed to be a granting power to a trial judge
19 to allow this deposition to be entered if all the qualifi-
20 cations are met in the preceding section and if they are met
21 down below, whereby if it is struck out regardless of whether --
22 of what -- the Sixth Amendment says until it's specifically
23 ruled on by the court, maybe it should be left in to allow
24 the prosecution to be able to introduce such a deposition even
25 though, at the time of the trial, the defendant does not have

1 the right to be able to be present and cross-examined.

2 DELEGATE DAHOOD: Delegate McDonough, I think you
3 raised a good point. I think that the Montana Criminal Code
4 which, of course, was recently passed and which recently be-
5 came law in Montana, does cover the point. I think you're
6 correct that this does provide a direction to the court that
7 if the other conditions are met, then this particular depos-
8 ition shall be admissible. In my judgment, I do not think
9 eliminating this particular section is going to change the
10 status of criminal procedure in any respect. Perhaps, Mr.
11 Chairman, as long as these questions are being raised and
12 there is some doubt, perhaps then we should reject the amend-
13 ment. I, from a standpoint of substance, do not think it is
14 going to effect our present state with respect to civil pro-
15 cedure in the criminal area at all. If there is some question,
16 then I think perhaps then, even though I have no personal ob-
17 jection on behalf of the committee to this amendment, it
18 ought to be rejected. We looked at this section. I looked at
19 it. The other lawyers looked at it. There were things that
20 we could have done perhaps to make the wording more clear,
21 perhaps to add something, but we did think that there were
22 other areas of the law which, of course, were enacted by the
23 legislature that cover the situation. There are basic con-
24 stitutional protections with respect to the defendant that
25 must be honored at all times, but in view of the questions that

1 have been raised and questions by lawyers, I would think that
2 under the circumstances, perhaps I should not agree with Dele-
3 gate Kelleher and perhaps the section should remain as it is.
4 Thank you, Mr. Chairman.

5 CHAIRMAN GRAYBILL: Mr. Davis.

6 DELEGATE DAVIS: Mr. President. I would feel com-
7 pelled to resist the amendment. There's a lot of truth in
8 what has been said about the fact that the federal may control,
9 but this has been in the constitution since its inception. It
10 has been interpreted the last time in 147 Montana. I don't
11 know what year that would -- about '65 or after that -- and
12 they felt that this provision allowing for the taking of depo-
13 sitions does not violate Article Three, section sixteen of
14 the Montana Constitution which provides for the right to con-
15 frontation and that this deposition taken under the authority
16 of this provision is admissible upon trial upon showing the
17 witness is either dead or not within the jurisdiction. It's
18 extremely important in a case and I think I maybe can give you
19 an example that may be of some benefit. In a recent criminal
20 action, we had a real notorious criminal who robbed an old
21 man down by the river, tied him up and he was going to kill
22 him. The witnesses to the thing were from out of state. We're
23 permitted to take their deposition and preserve it. The tes-
24 timony is then preserved and, in some instances, you don't
25 have the defendant himself captured. You maybe don't even

1 know who he is until several years later, in some recent cases
2 in Montana. The first part of this section permits you to
3 take this material witness and hold him unless he makes bail
4 or take his deposition. Well, the whole theory is not to
5 hold the material witness. The right of another person is
6 involved now, the right of a witness. He's not going to be
7 confined until trial. You can release him but he takes his
8 deposition. If the defendant is unknown, it's not necessarily
9 prejudicial; it may never be used. In the case that I'm
10 referring to, the defendant jumped fifteen thousand dollars
11 bail and was apprehended two years later hoping that the old
12 man would die. His testimony would then be gone and the case
13 is gone against him, or the other material witness would be
14 gone who had moved out of state in the construction business.
15 So, I would think that it would be a grave mistake to take
16 away this. The federal courts are very jealously guarding
17 all rights of defendants. The supreme court is very jealously
18 guarding all rights of the defendant, and I don't think it
19 would accomplish what you're really seeking to do by just
20 deleting the last portion of this. There needs to be a pro-
21 vision for taking of depositions of material witnesses in any
22 criminal case and I'm sure we want to preserve that. Thank
23 you.

24 CHAIRMAN GRAYBILL: Mr. Kelleher.

25 DELEGATE KELLEHER: Mr. Chairman. I didn't mean

1 to instigate a great debate over such a minor technical matter.
2 In State vs. Storm, our own supreme court held -- and this is
3 no place to conduct an education class on criminal procedure.
4 I realize that too. -- Our supreme court, in 1953 said, it
5 was fair for the trial court to allow the testimony of a witness
6 at the first trial to be read into evidence at the second
7 trial. It was the right of the defendant to have the jury
8 seen observe the witness upon the witness stand. It was his
9 right that the jury see how the witness acted upon direct and
10 cross-examination. It was his right to have the jury judge
11 the credibility of the witness from his appearance and manner
12 while on the witness stand. None of these rights could be had
13 except and unless the witness met the defendant, quote face to
14 face close quote, in the presence of the jury during the course
15 of the trial. This is awful clear law. I thought it was.
16 I had a murder case last summer and the only witness was a
17 prostitute. They had to go find her, put her in jail, take
18 her deposition and she took off. The federal court in Pointer
19 vs. Texas -- once again, the blue and white book done by Mr.
20 Applegate -- clearly sets forth that the supreme court held
21 that the right would be enforced against the state under the
22 Fourteenth Amendment according to the same standards to pro-
23 tect those personal rights against federal encroachment close
24 quote. There's no doubt -- by striking the last sentence,
25 they could still take the deposition of any defendant. They

1 could put this person in jail. The reason I didn't strike the
2 whole section which, as I told Chairman Dahood the other day,
3 is that I think there's some merit to leaving the first part of
4 the section in so that they just can't take them, lock them
5 up, take their deposition and then forget about them. They
6 have to release them, but even that is covered by the statute.
7 The more I think about it, Chairman Dahood, I think maybe the
8 whole section ought to be stricken. It's unnecessary in the Bill
9 of Rights and it's covered by our statutory law, in Title
10 Ninety-five of the Revised Codes. If we want to leave in an
11 unconstitutional provision, that's all right. I'm not going
12 to make a big issue about it. There are a lot of other matters
13 that are a lot more important, Mr. Chairman, that we should be
14 getting on to.

15 CHAIRMAN GRAYBILL: Very well. The issue is on Mr.
16 Kelleher's amendment to strike the last sentence, lines
17 twenty-four to twenty-six of section twenty-three. That sent-
18 ence says: Any deposition authorized by this section may be
19 received as evidence on a trial if the witness shall be dead
20 or absent from the state. So many as shall be in favor of Mr.
21 Kelleher's motion, say Aye.

22 DELEGATES: Aye.

23 CHAIRMAN GRAYBILL: Opposed, No.

24 DELEGATES: No.

25 CHAIRMAN GRAYBILL: It's defeated. Mr. Arbanas, do

1 you have an amendment to this section? Very well. Is there
2 other discussion of section twenty-three? If not, members of
3 the committee, you have before you for your consideration upon
4 the recommendation of Mr. Foster, that when this committee
5 does arise and report after having had under consideration sec-
6 tion twenty-three, it recommend the same be adopted. All in
7 favor of that motion, say Aye.

8 DELEGATES: Aye.

9 CHAIRMAN GRAYBILL: Opposed.

10 (No response)

11 CHAIRMAN GRAYBILL: It's adopted. Twenty-four, Mr.
12 Clerk.

13 CLERK SMITH: (Reading) Section twenty-four, Rights
14 of the Accused: In all criminal prosecutions the accused
15 shall have the right to appear and defend in person and by
16 counsel; to demand the nature and cause of the accusation; to
17 meet the witness against him face to face; to have process to
18 compel the attendance of witnesses in his behalf, and a speedy
19 public trial by an impartial jury of the county or district in
20 which the offense is alleged to have been committed, subject
21 to the right of the state to have a change of venue for any
22 of the causes for which the defendant may obtain the same.
23 Section twenty-four, Mr. Chairman.

24 CHAIRMAN GRAYBILL: Mr. James.

25 DELEGATE JAMES: Mr. Chairman and fellow delegates.

1 I move that when this committee does arise and report after
2 having had under consideration section twenty-four of Proposal
3 Eight, it recommends that the same be adopted as amended.

4 Mr. Chairman.

5 CHAIRMAN GRAYBILL: Mr. James.

6 DELEGATE JAMES: The committee voted unanimously to
7 retain the former Article Three, section sixteen, unchanged.
8 The committee felt it was an admirable statement of the funda-
9 mental procedural rights of the accused. No delegate proposals
10 were received on this provision. This section is basically
11 the same as Article Six in the Bill of Rights in the Federal
12 Constitution adopted in 1791. It is the same as section six-
13 teen in our present constitution. It has stood the test of
14 time and I feel that it should be adopted as is.

15 CHAIRMAN GRAYBILL: Is there discussion?

16 Mr. Habedank.

17 DELEGATE HABEDANK: Mr. President. Would Mr. James
18 yield to a question?

19 DELEGATE JAMES: Yes, Mr. Habedank.

20 DELEGATE HABEDANK: I realize this section is iden-
21 tical with the present constitution, but I've always wondered
22 about the words on line eleven in the present constitution
23 and as contained herein, or district. I'm wondering if any
24 consideration was given by the committee to striking those
25 words so that a person would have to be tried in the county

1 where the crime is committed. We don't have districts in the
2 state of Montana, and I don't know what the framers had in
3 mind.

4 DELEGATE JAMES: I assume, while I'm not one of the
5 legal lights, I do believe that this is the county judicial
6 district or, I suppose if we set up a district system event-
7 ually in our state, this could apply. Does that satisfy you?
8 Thank you, Mr. Habedank.

9 CHAIRMAN GRAYBILL: Is there further discussion?
10 If not, members of the committee, you have before you section
11 twenty-four upon Mr. James' recommendation that when this
12 committee arise and reports that we recommend it do be adopted.
13 All in favor of that motion, say Aye.

14 DELEGATES: Aye.

15 CHAIRMAN GRAYBILL: Opposed, No.

16 (No response)

17 CHAIRMAN GRAYBILL: Section twenty-four is adopted.
18 Will the clerk read section twenty-five?

19 CLERK SMITH: (Reading) Section twenty-five, Self-
20 Incrimination and Double Jeopardy: No person shall be com-
21 pelled to testify against himself in a criminal proceeding,
22 nor shall any person be twice put in jeopardy for the same
23 offense previously tried in any jurisdiction. Section twenty-
24 five, Mr. Chairman.

25 CHAIRMAN GRAYBILL: Mr. James.

1 DELEGATE JAMES: Mr. Chairman. I move that when
2 this committee does rise and report after having had under
3 consideration section twenty-five of Proposal Number Eight, it
4 recommends that the same be adopted as amended.

5 CHAIRMAN GRAYBILL: Mr. James.

6 DELEGATE JAMES: Mr. Chairman. Self-incrimination
7 and double jeopardy. No person shall be compelled to testify
8 against himself in criminal proceedings, nor shall any person
9 be twice put in jeopardy for the same previously tried offense
10 in any jurisdiction. Now, there's a little change in this.
11 If you read the comments, I believe there have been some
12 cases here where a person could possibly be tried in both
13 state and federal jurisdiction. I must admit, Mr. Chairman,
14 that I'm kind of on the spot here, because according to my
15 standard motion sheet, I was supposed to take twenty-four,
16 twenty-eight, twenty-nine and thirty-one. So, I was sort of
17 caught off base on this one so I will defer to Mr. Dahood.

18 CHAIRMAN GRAYBILL: Mr. Dahood wrote your name on
19 the sheet. Mr. Dahood, would you like to help him out.

20 DELEGATE DAHOOD: Yes, I will Mr. Chairman. I
21 think there was a mistake in the typing, but in any event, it
22 is probably something that I should explain since it is a
23 legal distinction. We have added the language, nor shall any
24 person be twice put in jeopardy for the same offense previously
25 tried in any jurisdiction. The phrase, previously tried in

1 any jurisdiction, has been added. The rule throughout the
2 United States and in several states in the past has always
3 been that you could be tried twice for the same crime, and be
4 punished twice for the same crime contrary to the popular con-
5 ception that this cannot happen in America. It was justified
6 by the courts in this fashion. A state is a separate criminal
7 jurisdiction. The United States is a separate federal juris-
8 diction. Each is autonomous in the area of criminal practice
9 and each has a sovereign right to prescribe punishment for
10 transgressions of the law within its own area of jurisdiction.
11 Consequently, if you stole a car in Montana and drove it across
12 a state line, you would commit two crimes. The first crime,
13 of course, would be against the law of the state of Montana
14 in taking the car, and technically you could be tried, con-
15 victed and sentenced to a substantial term in the penitentiary.
16 The federal court could then place a detainer upon you and,
17 upon your release since the statute of limitations would not
18 run while you were incarcerated, then take you to a federal
19 court room and have you tried, convicted, and sentenced to a
20 federal penitentiary. The Supreme Court of the United States
21 in reviewing the situation, has not indicated that the two
22 sovereignties rule is perhaps unconstitutional. We do not
23 have a clear cut declaration that this is going to be applied
24 absolutely in all cases. I understand that in the federal
25 prosecuting area, there is a somewhat unwritten policy that

1 the Federal Government will no longer participate in that type
2 of situation. We think it violates a basic fundamental right
3 that an individual should be punished only once for whichever
4 transgression he may be convicted of, whether under federal
5 law or state law. It shouldn't make any difference which
6 jurisdiction has him first. The idea of the court is to pro-
7 tect society, to have him punished, to have him pay his debt
8 to society, and after that debt has been paid in full, to
9 return and rehabilitate himself and become a useful citizen
10 and a functioning member of society. What this does is to
11 provide now in Montana that if someone should commit some
12 crime within the geographical, sovereign limits of Montana
13 and he transgresses federal criminal law at the time that he
14 does it, the federal court should have him tried and convicted
15 after indictment by a federal grand jury, that's the end of it.
16 The state of Montana then loses jurisdiction to try him. I
17 might tell you this, that usually, unless there's some over-
18 riding consideration, the federal prosecuting authorities
19 usually will defer to the wishes of the state prosecuting
20 authorities in proceeding where there is a violation of state
21 law. We think it is a right that should be afforded constitu-
22 tionally. It is fair and just and we submit that this partic-
23 ular section, as amended, should be adopted. Thank you, Mr.
24 Chairman.

25 CHAIRMAN GRAYBILL: Mr. James.

1 DELEGATE JAMES: Mr. Chairman. That's exactly what
2 I meant. Thank you, Wade. (Laughter)

3 CHAIRMAN GRAYBILL: Mr. Arness.

4 DELEGATE ARNESS: Maybe I should address my question
5 to Mr. James, then. I wonder if I could ask Mr. Dahood a
6 question.

7 CHAIRMAN GRAYBILL: Mr. Dahood, would you yield to
8 a question from Mr. Arness.

9 DELEGATE DAHOOD: I yield.

10 DELEGATE ARNESS: As I understand it, Mr. Dahood,
11 this area is an area that is covered or generally comes into
12 play under the operation of what's called the Posse Comitatus
13 Act that was enacted by the federal congress. Where we get
14 into problems of this kind would be a situation where an air-
15 man from Malmstrom would steal a car in Great Falls and drive
16 it into the air force base. The prosecution in the state
17 court for the car theft would probably not entirely satisfy
18 the air force authorities who might want to give this man a
19 dishonorable discharge on account of the offense that he had
20 committed against his status as an airman. How would this
21 provision that we have in the constitution here affect the
22 operation of the Posse Comitatus Act and the situation that I
23 have described?

24 DELEGATE DAHOOD: If you're referring to the military
25 tribunal, Delegate Arness, let me state this. I was an officer

1 in the Judge Advocate General's Corps during the Korean War,
2 served in the defense appellate division in Washington, D. C.
3 under the new uniformed code of military justice which is a
4 little too complicated to discuss at this point. Let me just
5 say this. What we're trying to do here is to make sure that
6 Montana is not going to punish someone who has already been
7 punished for a transgression against society, whether it be the
8 Montana society or the federal society.

9 CHAIRMAN GRAYBILL: Mr. Arness.

10 DELEGATE ARNESS: May I ask another question?

11 CHAIRMAN GRAYBILL: Yes, sir.

12 DELEGATE DAHOOD: I yield, Mr. Chairman.

13 DELEGATE ARNESS: You don't think then that the
14 operation of this, on the other hand, that is from the federal
15 point of view, would make any difference so far as our deliber-
16 ations are concerned?

17 DELEGATE DAHOOD: No, Delegate Arness, because we
18 cannot do anything that is going to be binding upon the federal
19 jurisdiction or the military jurisdiction. We can only pass
20 a constitutional protection with respect to the operation of
21 Montana law. Any protection within the two sovereignties
22 that rule must come for the federal area from the federal
23 courts and within the military area from the United States
24 Court of Military Appeals. We can only be concerned with Mon-
25 tana. We're hopeful that by doing this in Montana, that we're

1 going to balance out the trend and the movement within the
2 federal area. What the military is doing, I'm not prepared to
3 state at this time.

4 CHAIRMAN GRAYBILL: Mr. Arness.

5 DELEGATE ARNESS: That's all the questions I have.

6 CHAIRMAN GRAYBILL: All right.

7 Mr. Studer.

8 DELEGATE STUDER: Mr. President. Would Delegate
9 Dahood yield to another question?

10 DELEGATE DAHOOD: I yield, Mr. Chairman.

11 DELEGATE STUDER: I really don't know much about
12 this Kamikaze Quo Vadis Act or whatever it was you were talking
13 about but if a fellow stole that car like you say and went
14 out of the state with it and the federals tried him first for
15 transportation over the state line, and I wasn't exactly satis-
16 fied that they had tried him right and he had been turned loose,
17 that means that when that fellow comes back here and we have
18 definite evidence that he had swiped the car and everything,
19 I can't do anything about it?

20 DELEGATE DAHOOD: No, there's not a thing you can
21 do about it simply because they've had one chance at him and
22 that's enough. That's double jeopardy. It's just like in
23 our state courts. Let me amplify somewhat. Let's assume an
24 individual is tried in state court for a criminal act and some
25 mistake is made in the trial that allowed the jury to come back

1 with a verdict of acquittal. You cannot then appeal to the
2 supreme court, for example, and say that there was some type
3 of procedural error or that there was some evidence that we
4 could have procured at that particular time that might have
5 convicted him which we didn't have at that time. Once the
6 acquittal is made, once there's a verdict of not guilty, that's
7 the end of it regardless of what anyone might think upon re-
8 flection.

9 DELEGATE STUDER: Mr. President. May I ask another
10 question?

11 CHAIRMAN GRAYBILL: Yes, Mr. Studer.

12 DELEGATE DAHOOD: I yield, Mr. Chairman.

13 DELEGATE STUDER: You haven't got it exactly right.
14 You know, they prosecuted him for going across the state line
15 with a car. Now, I want to prosecute him for swiping the car.
16 Is that two different actions?

17 DELEGATE DAHOOD: Basically, Delegate Studer, the
18 courts look at it from the standpoint that there are certain
19 operative facts within a particular crime or a particular area
20 of criminal activity. That argument has been used a number of
21 times to try and get around the double jeopardy provision.
22 The courts always say that if you're in the course and conduct
23 of a particular activity to accomplish a particular act, either
24 you are going to be tried on a number of counts at that partic-
25 ular time for the various laws that you may have violated in

1 trying to achieve this particular criminal objective, and the
2 prosecuting officials are prohibited from going back into it.
3 I know precisely what you have in mind. You might be able to
4 say, well, even though he has only done this one thing, he
5 has violated a number of laws. He has violated perhaps a law
6 of break-in and entry, perhaps a malicious destruction of
7 property, asportation of the property itself. Perhaps in tak-
8 ing the car, there was an assault. There are a number of
9 things that could take place. If you want that individual
10 convicted for all of those independent, criminal transgressions
11 even though they come within the same criminal activity area,
12 then you must allege different counts at the time that he is
13 being tried. If you elect to go ahead just on one count, you
14 can't say, well, I'll try it on one count; if I don't make it
15 there, I'll come back and get the guy on the second count, and
16 if I miss there, I'll get him on the third. That's not per-
17 mitted. Have I answered your question?

18 DELEGATE STUDER: Yeah, but not too good. I ain't
19 satisfied with it. (Laughter)

20 DELEGATE DAHOOD: All right, Delegate Studer, thank
21 you very much.

22 CHAIRMAN GRAYBILL: Mr. Dahood, you've answered his
23 question.

24 Mr. Loendorf.

25 DELEGATE LOENDORF: Mr. Dahood, would you yield?

1 CHAIRMAN GRAYBILL: Mr. Dahood.

2 DELEGATE DAHOOD: I yield, Mr. Chairman.

3 DELEGATE LOENDORF: Is your answer to Mr. Studer's
4 question this? If there are two acts, the act of stealing a
5 car and the second act, of taking the car across the state
6 line, may there be a prosecution under the federal law for
7 violation of a federal law of interstate transportation and
8 also a subsequent prosecution under state law for the car
9 theft?

10 DELEGATE DAHOOD: My answer is that under our amend-
11 ment, that cannot take place.

12 CHAIRMAN GRAYBILL: Is there further discussion of
13 section twenty-five? If not, members of the body, you have
14 before you on the motion of Mr. James, that when this committee
15 does arise and report after having had under consideration
16 section twenty-five, that it recommend the same be adopted.
17 So many as are in favor of that motion, say Aye.

18 DELEGATES: Aye.

19 CHAIRMAN GRAYBILL: Opposed, No.

20 DELEGATES: No.

21 CHAIRMAN GRAYBILL: The Ayes have it. I postponed
22 this until after Mr. Kelleher made his motion a while ago, but
23 Mr. Kelleher, would you like to make your public recantation
24 now? (Laughter)

25 DELEGATE KELLEHER: Oh, it isn't that bad. I just

1 would like the journal to show that I was on that wrong way
2 trip with wrong way Harrington. I was in that airplane yester-
3 day with you, Dan. I meant to vote on section fourteen, was
4 it, on the eighteen year olds having adult rights. I wanted
5 to show. I thought I was voting on the amendment and I wanted
6 it to show that I'm in favor of eighteen year olds being
7 declared adults. Thank you, Mr. Chairman.

8 CHAIRMAN GRAYBILL: That's number two. Of the two
9 people that voted against that required roll call vote yester-
10 day, they have both admitted they were wrong now. (Laughter)
11 We're glad to have the record show that you two meant to be
12 with the majority and I'm still looking for the guy that made
13 us go on a roll call on that. (Laughter) Mr. Campbell, do
14 you wish to recant?

15 DELEGATE CAMPBELL: No, I certainly don't. I would
16 just like to congratulate Mr. Kelleher and Mr. Harrington and
17 say that it was the first unanimous vote that we've ever
18 agreed on anything. I'm certainly happy it's on the record
19 and it couldn't be for a better group. Thank you very much.

20 CHAIRMAN GRAYBILL: All right. Now we're on section
21 twenty-six. Will the clerk read twenty-six?

22 CLERK SMITH: (Reading) Section twenty-six, Trial
23 by Jury: The right of trial by jury shall be secured to all,
24 and remain inviolate, but in all cases and upon default of
25 appearance, or by consent of the parties expressed in such

1 manner as the law may prescribe, a trial by jury may be waived,
2 or a trial had by any less number of jurors than the number
3 provided by law. In all civil actions two-thirds in number
4 of the jury may render a verdict, and such verdict so rendered
5 shall have the same force and effect as if all such jury con-
6 curred therein. In all criminal actions, the verdict shall
7 be unanimous. Section twenty-six, Mr. Chairman.

8 CHAIRMAN GRAYBILL: Mr. Campbell.

9 DELEGATE CAMPBELL: Mr. Chairman. I move that when
10 this committee does arise and report after having had under
11 consideration section twenty-six of Proposal Number Eight, it
12 recommends that the same be adopted. Mr. Chairman.

13 CHAIRMAN GRAYBILL: Mr. Campbell.

14 DELEGATE CAMPBELL: You will see on page thirty-nine
15 of our Bill of Rights booklet the comments on this section.
16 We have kept it the same except for two changes which we feel
17 will allow a great deal of flexibility in the law. First of
18 all, a number less than twelve could be used in any civil or
19 criminal trial if the defendant or the parties agree. Second
20 of all, a jury trial could be waived by a defendant. This is
21 important especially in the smaller counties where a jury trial
22 may come up only every six months. If a person cannot afford
23 bail, he must remain in the small, often inadequate county
24 jails until the next jury term. This would allow him to in-
25 telligently waive this right and allow him to be tried by a

1 judge without a jury. The third change in this would require
2 a unanimous jury verdict. As you know, under the old constitu-
3 tion, a misdemeanor is two-thirds of the jury in a criminal
4 action and could convict. We feel that the misdemeanor status
5 for any criminal action should require the same standard of
6 proof and that is beyond a reasonable doubt. We do not feel
7 that we can justify taking away a man's livelihood, putting a
8 permanent criminal record on him for anything less than a
9 unanimous jury verdict. In the federal courts, a unanimous
10 jury verdict is required in all civil and criminal cases. We
11 have talked with the Montana County Attorneys Association
12 about these two changes. They did enthusiastically accept
13 them and I would recommend that they be adopted by the con-
14 vention. Thank you.

15 CHAIRMAN GRAYBILL: Mr. Habedank, do you want to
16 speak?

17 DELEGATE HABEDANK: Mr. President. In lieu of the
18 amendment which I sent up to you, I would propose amending
19 this section on line five, page thirty-nine, by inserting
20 between the words actions and two-thirds, the following words:
21 and in criminal cases not amounting to felony.

22 CHAIRMAN GRAYBILL: What line was that, Mr. Habedank?

23 DELEGATE HABEDANK: It would be on line five, page
24 thirty-nine of your particular one. Line five, page thirty-nine
25 between the words, actions and two-thirds.

1 CHAIRMAN GRAYBILL: All right. That's on line
2 nineteen, page nine. Mr. Habedank proposes an amendment to
3 section twenty-six, line nineteen, page nine of the first text.
4 In all civil actions and in criminal cases not amounting to
5 felonies -- you wanted it felonies, plural?

6 DELEGATE HABEDANK: I was using felony, singular.

7 CHAIRMAN GRAYBILL: All right, to a felony, a two-
8 thirds number of the jury could render a verdict. In other
9 words, it would have the effect of making misdemeanors in
10 civil and criminal cases decided by a two-thirds vote, right?

11 DELEGATE HABEDANK: That is correct, Mr. President.

12 CHAIRMAN GRAYBILL: Mr. Habedank, you may discuss
13 that.

14 DELEGATE HABEDANK: Mr. President. The words I have
15 inserted and the way it is inserted would make the present
16 proposed section twenty-six read as our prior section twenty-
17 three did. I am aware of the thinking of the majority, but I
18 do not agree with the majority that a conviction of a mis-
19 demeanor results in a lifetime criminal record. I feel that
20 any case in justice court is appealable to district court. If
21 a person receives what he considers an unfair trial without
22 any other reason than that, he can appeal the case to district
23 court and have it tried de novo. I feel a conviction by two-
24 thirds of a jury is just as reasonable in a misdemeanor case,
25 as two-thirds in a civil case. I strongly urge that the con-

1 stitution as it has been in existence for all these years, be
2 retained. I have not been in connection with the County
3 Attorneys Association, but I'm a little perplexed that they
4 would endorse such a change wholeheartedly. I rather think
5 they may have stated that they would accept and have to work
6 with it, which they would have to if they required a unanimous
7 decision. I would like to ask Mr. Davis if he would yield to
8 a question as he has been in this business. Mr. Davis?

9 DELEGATE DAVIS: Mr. Habedank.

10 DELEGATE HABEDANK: Would you state your feeling as
11 a county attorney about a unanimous verdict in misdemeanor
12 cases?

13 DELEGATE DAVIS: I don't feel a unanimous verdict
14 is necessary. I don't know what testimony the committee heard
15 on this particular point. I would have some very serious
16 reservations if there was too much testimony, that this created
17 any great amount of injustice. You're dealing with the lesser
18 type offenses and I don't know what the County Attorneys
19 Association's position is on it since I'm no longer a county
20 attorney. I'm not too much help. Thank you.

21 CHAIRMAN GRAYBILL: Mr. Foster.

22 DELEGATE FOSTER: Mr. President and fellow delegates.
23 I resist the amendment very strongly. The whole concept of
24 trial by jury is that the individual have the protection that
25 he be declared guilty beyond a reasonable doubt. If, in fact,

1 the prosecution can show that he is guilty beyond a reasonable
2 doubt, he will, in fact, be found guilty by a unanimous decision.
3 The question of the seriousness, to me, seems to be somewhat
4 begging the point. Whether it's a misdemeanor or a felony,
5 it's still a question of prosecution. It's still a question
6 that's on your record. It's a question which society is
7 looking to in judging you as an individual. I submit that if
8 any of us are going to be tried on a count, it'll probably be
9 on a misdemeanor charge. I think we need the protection of
10 being found guilty beyond a reasonable doubt. I think this
11 is a very basic right as an American citizen and I think this
12 is taking a step in our constitution to preserve this import-
13 ant right.

14 CHAIRMAN GRAYBILL: Mr. Melvin.

15 DELEGATE MELVIN: Mr. Chairman. Would Mr. Foster
16 yield to a question?

17 CHAIRMAN GRAYBILL: Mr. Foster.

18 DELEGATE FOSTER: Yes, Mr. Chairman.

19 DELEGATE MELVIN: Mr. Foster. In the present con-
20 stitution, the provision is the same as the amendment. Did
21 your committee hear any testimony that would indicate any
22 abuses as a result of the two-thirds rule in the constitution?

23 CHAIRMAN GRAYBILL: Mr. Foster.

24 DELEGATE FOSTER: Our committee discussed it in
25 considerable detail. We did not actually solicit or receive

1 outside testimony. But, in the course of our discussions and
2 our deliberations, we felt that, in fact, a number of instances
3 could apply where if a person had been found guilty of a mis-
4 demeanor, it could affect him in business. It could affect
5 him in his normal life. It also could affect him if he was
6 later charged with some other act. We felt it was an import-
7 ant right to be found guilty beyond a reasonable doubt. We
8 did not go out and solicit input of people that have been
9 found guilty for misdemeanors. We didn't feel that this was
10 necessary. Our committee did discuss it very fully and we
11 unanimously agreed that this provision should be in the con-
12 stitution. Thank you, Mr. Chairman.

13 CHAIRMAN GRAYBILL: Mr. Melvin.

14 DELEGATE MELVIN: Mr. Chairman. I support Mr.
15 Habedank's amendment as being the same as is in the present
16 constitution. It seems to me that that has served us quite
17 adequately.

18 CHAIRMAN GRAYBILL: Mr. Berg.

19 DELEGATE BERG: Would Mr. Dahood yield to a question?

20 CHAIRMAN GRAYBILL: Mr. Dahood.

21 DELEGATE DAHOOD: I do yield, Mr. Chairman.

22 DELEGATE BERG: Under the provisions of the amend-
23 ment as you have it for a misdemeanor, it would require a
24 unanimous verdict to acquit as well as to convict. Is that
25 true?

1 DELEGATE DAHOOD: A unanimous verdict to acquit?

2 DELEGATE BERG: Yes.

3 DELEGATE DAHOOD: That would be correct otherwise
4 you would have a hung jury.

5 DELEGATE BERG: And if you have a hung jury, you'd
6 have a mistrial and the action may be tried again.

7 DELEGATE DAHOOD: That's the same situation as in
8 a felony case at the present time, Mr. Berg. That's correct.

9 DELEGATE BERG: This then would obtain on misdeme-
10 anors. So that the delegation understands it, in order to
11 acquit, you also require a unanimous jury decision. Under
12 the old constitution, it took two-thirds to acquit as well as
13 to convict.

14 DELEGATE DAHOOD: Except for one thing, Mr. Berg.
15 You're placing the emphasis on the wrong side of that particu-
16 lar issue. We're concerned with protecting the innocent from
17 an unjust conviction. Your reasoning, if carried out logically,
18 is correct.

19 DELEGATE BERG: Unquestionably, the jury would be
20 so instructed, would they not?

21 DELEGATE DAHOOD: They would have to be so instructed.

22 CHAIRMAN GRAYBILL: Mr. Dahood.

23 DELEGATE DAHOOD. Mr. Chairman. I think the nonlawyer
24 delegates would be interested to know that we have two require-
25 ments of proof in the system of justice which we have in the

1 state of Montana. The heart and soul of the American protect-
2 ive system of criminal justice is reasonable doubt. That sys-
3 tem exists first and foremost for the protection of the inno-
4 cent. In a criminal case, you are compelled to prove that the
5 defendant is guilty beyond a reasonable doubt, in different
6 terms but to the same effect, to a point of moral certainty,
7 before you cast your vote in favor of guilty. In a civil
8 case, the requirement of proof is substantially different.
9 All that is required in a civil case is that upon the scales
10 of justice, the evidence tips ever so slightly toward one
11 party or the other for that particular party to prevail. In
12 other words, if you have a quantum of proof that is measured
13 as one hundred percent, if you have fifty-one percent in a
14 civil suit, you are entitled to the verdict of that jury. You
15 don't have moral certainty. You don't have reasonable doubt
16 involved. In a criminal case, the state may have proved its
17 case by ninety-nine percent of the evidence, but a reasonable
18 mind because of that one percent vacuum, may engender or harbor
19 some reasonable doubt, and under our law, solidified by the
20 wisdom of the centuries, that individual is entitled to be
21 found not guilty. If the rule be then, from that reasoning,
22 that in all criminal cases in order to have our system of
23 justice work as we intend it to work, you have to be found
24 guilty beyond a reasonable doubt regardless of whether it's
25 a felony or a misdemeanor. How can you apply that reasoning

1 to a misdemeanor case where four out of six have voted for
2 guilt and two have not? How can you say then, that this in-
3 dividual has been convicted beyond a reasonable doubt when two
4 competent citizens have said, we are not satisfied? Has
5 reasonable doubt been really satisfied in that situation? Does
6 moral certainty really take over and command those facts to a
7 point where we can say that to a moral certainty, his guilt
8 has been established, when two competent citizens have said
9 no, we are not satisfied? A misdemeanor case is far more
10 important now than it was before. We discussed this issue
11 with respect to the rights of young people. My colleagues
12 can tell you of sheets that are sent to the sheriff's office,
13 and to the prosecuting officers from the federal enforcement
14 authorities, from the FBI headquarters in Washington. You
15 may think that a misdemeanor doesn't mean anything, but let
16 me tell you this. The vast record keeping department of this
17 country does note that these activities have occurred with
18 respect to your particular mode of life, and they will show
19 whether or not the accusation has been made, and what the re-
20 sult of that accusation has been. It is important. A mis-
21 demeanor is a criminal matter even though of less severe import
22 than a felony matter. The reasoning behind it is the same.
23 The spirit that protects the innocent as opposed to the guilty
24 is the same. If we're going to have any consistency, any
25 logical run of reason throughout all of the law which is what

1 we should have, if we're going to have a sound, legal, criminal
2 law system, then the requirement of proof, the requirement of
3 verdict must necessarily be the same. I must support the
4 position of our committee.

5 CHAIRMAN GRAYBILL: Mr. Kamhoot.

6 DELEGATE KAMHOOT: Mr. Chairman. I wonder if I could
7 ask Mr. Dahood two or three questions in a row here.

8 CHAIRMAN GRAYBILL: Mr. Dahood, will you yield?

9 DELEGATE DAHOOD: I yield.

10 DELEGATE KAMHOOT: Wade, this is for my own knowledge
11 now, so I may know how to vote. We're talking about minor
12 traffic violations, are we not?

13 DELEGATE DAHOOD: We are, anything that constitutes
14 a misdemeanor.

15 DELEGATE KAMHOOT: Then, in the case of a minor
16 traffic violation, it is this person's right to demand a jury
17 trial. This is also true?

18 DELEGATE DAHOOD: That is true.

19 DELEGATE KAMHOOT: Then he does not have to hire an
20 attorney?

21 DELEGATE DAHOOD: He does not in a misdemeanor
22 matter or in any other matter.

23 DELEGATE KAMHOOT: So, he has no expense himself by
24 asking for a jury trial?

25 DELEGATE DAHOOD: He does not.

1 DELEGATE KAMHOOT: Thank you, Wade. I'd like to
2 reiterate a little something that has happened in our area.
3 I don't know very much about courts. I've never been into
4 one, only as a witness or a juryman. We had a case where there
5 was a young person that had already had two convictions against
6 him for bad driving of his car. He was brought into court.
7 He demanded a jury trial. He did not hire a lawyer. He had
8 no expense. The jury system of selecting for these little
9 traffic things is very loose. They have a panel and the first
10 six that show up, they seat them on a jury. The charge was
11 for careless driving, inconsiderate and several other things.
12 What he had done, and he didn't deny it at all -- He would
13 come to an intersection where there was a stop sign and he
14 would go through it in a proper matter. Then he would floor-
15 board his car and spin his wheels for three-fourths of the
16 block. Then he would set the brakes and slide for the other
17 fourth up to the next one. He did this for three stop signs
18 in succession. The policeman observed all of this and he
19 thought this was grounds for bringing him into court and he
20 did. He had a witness. He defended himself. The defense was
21 solely that he had gotten some bad gasoline in his car and
22 it sputtered a little bit every once in a while. The only
23 way he could clear it up was to tromp on the gas, give it
24 full throttle. Then another fault had occurred that he didn't
25 know about and the throttle would stick. So, consequently, he

1 went through three intersections, three blocks and spinning
2 his wheels for three-fourths of the block and sliding them
3 for the other fourth because of malfunctions; first was bad
4 gas and the next was that the throttle would stick. This was
5 the defense. He was convicted. His driver's license was
6 taken away for sixty days, but that was not a unanimous de-
7 cision. It's very easy to get someone on that jury that's
8 going to stand up for that kid for whatever he does. I think
9 this is completely ridiculous. I think you're going to just
10 turn something loose here that you don't want to live with.
11 So, I would certainly support the amendment. Thank you, Mr.
12 Chairman.

13 CHAIRMAN GRAYBILL: The journal may show Oscar
14 Anderson is here and may vote.

15 Mr. Arness.

16 DELEGATE ARNESS: Mr. Chairman. I have been a county
17 attorney and a city attorney. I'm not one right now but I
18 have prosecuted a number of these cases, including a number
19 like Mr. Kamhoot has described. In fact, that sounds very
20 much like the typical city of Libby case. I think that county
21 attorneys and city attorneys wouldn't object to having a
22 unanimous verdict despite what has been said here about this.
23 I can't, of course, speak for the association presently, but
24 it seems to me that this would be something that the prosecutor
25 would probably be indifferent to one way or the other. As

1 the members of the committee have already pointed out, this
2 is the kind of thing that the defendant would be a good deal
3 more interested in than the prosecutor. The defendant certain-
4 ly had his representatives on the Bill of Rights Committee.
5 I think that the reference to the county attorneys and their
6 approval of this section probably refers to another aspect of
7 this section, which county attorneys would be quite interested
8 in, and which I would like to talk about after we get over
9 this one. But, so far as this question of two-thirds or a
10 majority is concerned, I'm sure the prosecutor would be, for
11 the most part, indifferent to it. This is, after all, a
12 description of what the federal system is, and that works,
13 and they don't have any trouble with that. I think that the
14 amendment should be defeated and I'd say that as a former
15 prosecutor. Thank you, Mr. Chairman.

16 CHAIRMAN GRAYBILL: Mr. Campbell.

17 DELEGATE CAMPBELL: I rise to oppose the amendment.
18 What we're talking about is not just a traffic ticket, it's
19 not a parking ticket, it's up to one year in the county jail --
20 anything less than going to prison for and that's a big, big
21 crime. How many of us would want to spend eleven months in
22 a county jail? How many of our families would ever want to
23 have this sort of thing? We hope we never would. Now, the
24 crime in many misdemeanor cases that I have had, that Mr.
25 Dahood has had, that Mr. Murray has had -- Mr. Murray, being

1 a county attorney was on the Bill of Rights Committee. We dis-
2 cussed all of these things. We felt that the protection was
3 needed for the individual, not the prosecutor. We don't seem
4 to think that the prosecutor should have the easiest life
5 possible to put criminal records on our citizens. Many times
6 these misdemeanors will deprive a man of his livelihood. If
7 it's a driver's license, if it's a close question, should he
8 be convicted? Should he lose his driver's license? Should
9 he lose his livelihood? This could run into thousands of dol-
10 lars a year. Should his family be forced to go onto welfare
11 on these things? These are very serious questions, and after
12 careful consideration, from our experience, from Mr. Murray's
13 experience -- I've talked to the past president of the Mon-
14 tana Bar Association, Cale Crowley from Billings on this.
15 He felt it was a good idea. He supported it. The County
16 Attorneys Association has not met on it as a group. I only
17 talked to its president. I did talk about the entire section
18 with him. I don't mean to infer that they're going to come
19 out and wave the flag in support of the whole thing at the
20 steps of the Capitol building. But, he did feel that this
21 section, as recommended by the majority report, would be a
22 substantial improvement over the present law. Thank you.

23 CHAIRMAN GRAYBILL: Mr. Davis.

24 DELEGATE DAVIS: Mr. President and fellow delegates.
25 I think we should clarify one thing about how this works. In

1 justice court or police court that Mr. Campbell appears in as
2 he mentioned, and you defend someone. If there's a two-thirds
3 court verdict in favor of the defendant, he's acquitted and
4 the case is over. The county attorney can't prosecute further
5 and he's happy to have it disposed of. If there's a two-thirds
6 verdict and the man is convicted, the state may very well just
7 be started, because all you have to do is appeal to the district
8 court and you have the case all over again. I couldn't care
9 less if I were still a county attorney, whether you had the
10 two-thirds, but it's a two way sword. In other words, you
11 can dispose of a lot of cases if you have a good defense and
12 are found innocent. Then, of course, you're completely off
13 the hook with two-thirds. The point that Mr. Berg is trying
14 to make is if you're found guilty, you can go right to district
15 court, by simply filing a notice of appeal and have a unanimous
16 verdict required for your conviction. It's still two-thirds
17 in district court on a misdemeanor. Anyway, you can still
18 appeal and get your second trial all over again on your dis-
19 trict court rules. As far as the prosecution is concerned,
20 it would give them a clear mandate. If you don't get your
21 two-thirds, I don't think that they would be pursuing the case
22 any further. If you do get your two-thirds, they have their
23 other right. It's not a big issue, I don't think, as far as
24 any of the county attorneys or law enforcement -- The problems
25 that have been hung on the law enforcement by the Bill of

1 Rights and the supreme court far exceed this. This is really
2 secondary, so whatever action is taken on it, I wouldn't be
3 concerned with.

4 CHAIRMAN GRAYBILL: Mr. Choate.

5 DELEGATE CHOATE: Mr. Chairman. There has been
6 quite a little talk about improvement of justice in our lower
7 court. I think, if we are going to look for some improvement,
8 it would certainly be fair that we knead out the same kind of
9 justice there on misdemeanors, as would be the case in district
10 court or higher court. I support the majority report.

11 CHAIRMAN GRAYBILL: Mr. Ask.

12 DELEGATE ASK: Mr. Chairman. I was formerly a
13 county attorney. I am no longer and I don't intend to be.
14 I should probably be voting for the majority because I'll
15 probably be a defense attorney in some cases. I rise to
16 support Mr. Habedank's amendment here. In my experience as
17 county attorney, this two-thirds vote in justice court has
18 worked very well. I've never seen any hardship that is
19 created. I think, in certain cases, we have to have some
20 protection for society also. I have seen most of these cases
21 that go through justice court at the present time are DWI's --
22 driving while intoxicated. I don't care what kind of a case
23 you have, you always have someone on the jury if you talk to
24 them afterwards -- you know, what they thought of the case,
25 etc. There's always maybe one or two on there that'll say,

1 oh, sure he was, but let him go. He'll lose his license, etc.
2 I don't think society is being protected with that kind of an
3 attitude. I think a two-thirds vote is a protection for the
4 defendant, either for a conviction or for an acquittal. If
5 you get a two-thirds and you haven't proved your case, you're
6 out of court. I think the amendment will put it back. I
7 think it has been reasonable. It would work very well and I
8 think we should support it. Thank you.

9 CHAIRMAN GRAYBILL: Mr. Romney.

10 DELEGATE ROMNEY: Mr. Chairman. May I ask Mr.
11 Dahood a question?

12 DELEGATE DAHOOD: I yield, Mr. Chairman.

13 DELEGATE ROMNEY: Mr. Dahood. I'm not sure that I
14 heard that accurately. Did I understand you to say that in
15 cases of accusations of violations amounting to a misdemeanor,
16 or in the convictions of same, that the data was sent to
17 Washington to Mr. Hoover's apparatus or someplace else?

18 DELEGATE DAHOOD: When they investigate, they seem
19 to pick up that information, Delegate Romney.

20 DELEGATE ROMNEY: Mr. Chairman, another question.
21 Does that mean that the FBI is maintaining a dossier on all
22 of us who are accused of a misdemeanor?

23 DELEGATE DAHOOD: I don't know. I've seen some of
24 the reports that do reflect what action is taken with respect
25 to misdemeanor matters.

1 DELEGATE ROMNEY: Thank you.

2 CHAIRMAN GRAYBILL: Is there further discussion?

3 If not, the question is on Mr. Habedank's motion that we add,
4 on line nineteen of section twenty-six, the phrase: In all
5 civil actions and in criminal causes not amounting to a felony,
6 two-thirds the number of the jury may render the verdict.

7 We'll have a roll call vote. All in favor of Mr. Habedank's
8 amendment, say Aye; all opposed, say No. Have all the dele-
9 gates voted? Does any delegate wish to change his vote?

10 Will the clerk tally the vote?

11 Aasheim	- Aye	Blend	- Nay
12 Anderson, J.	- Aye	Bowman	- Abs
13 Anderson, O.	- Aye	Brazier	- Aye
14 Arbanas	- Nay	Brown	- Aye
15 Arness	- Nay	Bugbee	- Abs
16 Aronow	- Nay	Burkhardt	- Nay
17 Artz	- Nay	Cain	- Nay
18 Ask	- Aye	Campbell	- Nay
19 Babcock	- Aye	Cate	- Abs
20 Barnard	- Aye	Champoux	- Abs
21 Bates	- Abs	Choate	- Nay
22 Belcher	- Aye	Conover	- Nay
23 Berg	- Nay	Cross	- Aye
24 Berthelson	- Aye	Dahood	- Nay
25 Blaylock	- Abs	Davis	- Abs

1	Delaney	-	Aye	Joyce	-	Nay
2	Driscoll	-	Abs	Kamhoot	-	Aye
3	Drum	-	Nay	Kelleher	-	Abs
4	Eck	-	Nay	Leuthold	-	Aye
5	Erdmann	-	Aye	Loendorf	-	Abs
6	Eskildsen	-	Aye	Lorello	-	Nay
7	Etchart	-	Abs	Mahoney	-	Abs
8	Felt	-	Abs	Mansfield	-	Abs
9	Foster	-	Nay	Martin	-	Nay
10	Furlong	-	Abs	McCarvel	-	Nay
11	Garlington	-	Abs	McDonough	-	Aye
12	Graybill	-	Nay	McKeon	-	Nay
13	Gysler	-	Abs	McNeil	-	Aye
14	Habedank	-	Aye	Melvin	-	Aye
15	Hanson, R. S.	-	Nay	Monroe	-	Nay
16	Hanson, R.	-	Abs	Murray	-	Nay
17	Harbaugh	-	Abs	Noble	-	Nay
18	Harlow	-	Nay	Nutting	-	Nay
19	Harper	-	Abs	Payne	-	Nay
20	Harrington	-	Nay	Pemberton	-	Nay
21	Heliker	-	Nay	Rebal	-	Abs
22	Holland	-	Nay	Reichert	-	Nay
23	Jacobsen	-	Nay	Robinson	-	Abs
24	James	-	Nay	Roeder	-	Nay
25	Johnson	-	Aye	Rollins	-	Nay

1	Romney	-	Nay	Sullivan	-	Nay
2	Rygg	-	Abs	Swanberg	-	Aye
3	Scanlin	-	Nay	Toole	-	Abs
4	Schiltz	-	Nay	Van Buskirk	-	Nay
5	Siderius	-	Nay	Vermillion	-	Nay
6	Simon	-	Aye	Wagner	-	Aye
7	Skari	-	Aye	Ward	-	Abs
8	Sparks	-	Nay	Warden	-	Abs
9	Speer	-	Nay	Wilson	-	Aye
10	Studer	-	Aye	Woodmansey	-	Aye

11 CLERK HANSON: Mr. Chairman, twenty-eight Delegates
12 voting Aye; forty-six voting No.

13 CHAIRMAN GRAYBILL: Forty-six having voted No and
14 twenty-eight having voted Aye, the motion is defeated. We're
15 still considering section twenty-six.

16 Mr. Arness, do you want the clerk to read your
17 amendment?

18 DELEGATE ARNESS: Please, Mr. Chairman.

19 CLERK HANSON: (Reading) Mr. Chairman. I move to
20 amend section twenty-six, line fifteen, page nine of the Bill
21 of Rights proposal, by adding the words following the word,
22 all, on line fifteen, as follows: Quote, civil cases and in
23 all criminal cases not amounting to felony. Signed, Arness.

24 CHAIRMAN GRAYBILL: Mr. Clerk, may I have that a
25 minute?

1 CHAIRMAN GRAYBILL: Mr. Arness proposes an amendment
2 on line fifteen of section twenty-six. The sentence would
3 then read: The right of trial by jury shall be secured to
4 all, and remain inviolate, but in all -- and then he adds --
5 civil cases and in all criminal cases not amounting to a
6 felony --

7 DELEGATE ARNESS: We should also strike the word,
8 cases, I see.

9 CHAIRMAN GRAYBILL: Strike the word cases -- and
10 upon default of appearance, or by consent of the parties
11 expressed in such manner as the law may prescribe, a trial by
12 jury may be waived. In other words, it has the effect in
13 my view, of not allowing a defendant in a felony case to
14 waive the trial by jury, is that right?

15 DELEGATE ARNESS: Correct, Mr. Chairman.

16 CHAIRMAN GRAYBILL: Mr. Arness.

17 DELEGATE ARNESS: This is the portion of the change
18 which I think the county attorneys would have liked. For
19 this, I think that probably they may very well have endorsed
20 it although I don't know. The effect of this would be to
21 make it a good deal easier to be a county attorney. I think,
22 speaking from my own experience at that, that it's much easier
23 to try a case without a jury. It requires a good deal less
24 work and a good deal less preparation. I think that the
25 present rule, which does permit a waiver of a jury case in a

1 felony, is a good one. Most of these felony cases -- Most
2 of the criminal cases are defended by young lawyers. Many of
3 them are people without experience and more enthusiasm some-
4 times than legal training. I think that there is a temptation
5 for them to waive the jury trial, and that they may not fully
6 be apprised of what they are doing or the disadvantages in
7 waiving a jury trial on behalf of their client. Also, there
8 is a certain trepidation about going before a jury. The
9 defendant in a criminal case is, I think, entitled to a jury
10 especially in a felony case, because these are matters of
11 serious import not only for the defendant but for society as
12 a whole. I feel that the jury case gives a good deal more
13 exposure and a good deal more publicity and certainly a good
14 deal more consideration to the case than just a trial before
15 the judge. It seems to me inconsistent to require that the
16 verdict be unanimous in all cases, which I think is a good
17 provision, and then on the other hand, to allow the jury to
18 be waived so that, essentially, what we have is a jury of
19 one person to try the case. I realize that it probably would
20 not be wise to put in this paragraph in this provision that
21 all juries be twelve man juries. I would be tempted to sug-
22 gest such a thing, but as it is, I think that this amendment
23 is sufficient. It would, at least insure in felony cases,
24 that there would be a jury. I think that in such cases, a
25 jury is required, and that it's necessary under our adversary

1 system. Thank you, Mr. Chairman

2 CHAIRMAN GRAYBILL: Mr. Aronow.

3 DELEGATE ARONOW: Mr. Chairman. I rise in support of
4 Mr. Arness' amendment. It has been a long time since I've
5 been a county attorney. I think it has been almost thirty
6 years since I was last county attorney. I do know in the
7 criminal cases, most of them occur with indigence being charged,
8 where the court makes an appointment of some young lawyer in
9 the community to defend the accused. I endorse much of what
10 Mr. Arness said in that regard, but there's one more factor.
11 On a trial to a court without a jury, it's much less expensive
12 for the county. There's quite a bit of pressure put on the
13 appointive counsel to waive a valuable right of a jury to
14 which the accused is entitled to have. Also, the temptation
15 on the part of the defense counsel who is appointed and who
16 gets about the same amount of money whether he disposes of
17 the case easily or whether he works hard at it, is to take
18 the easy route. I don't think our form system of justice
19 should be influenced in that manner. I don't care who the
20 person is. Under our law and under our theory of justice,
21 that individual is entitled to the best effort possible in
22 his behalf. He is entitled to put forth whatever defense he
23 may have in the best light possible. Many times, the judge
24 also is somewhat desirous of making his court look good in the
25 eyes of the taxpayers and the county commissioners, to cut

1 down costs. This opens up a whole box of reasons why the
2 pressure is placed upon a defendant, upon a defendant's appoint-
3 ive counsel to waive the jury, to do things the easy way and
4 to save taxpayers' money. Therefore, I support Mr. Arness.
5 This is an important matter also in regard to the protection
6 of the individual rights of people.

7 CHAIRMAN GRAYBILL: Mr. Campbell.

8 DELEGATE CAMPBELL: I rise to oppose the amendment.
9 I certainly feel that this is not in any way eliminating a
10 person's rights to a jury trial. He certainly does have that.
11 What it does is give the individual the option of determining,
12 with his attorney, whether or not it would be in the best
13 behalf of his defense to waive the jury trial which may not
14 come up in this county for another four to five months while
15 he is still in the jail, or go directly to the judge now
16 waiving the jury. The burden is always on the state to prove
17 that he knowingly and intelligently waived this constitutional
18 right. They would certainly see that this is protected. As
19 far as the public defenders, I've found that the younger public
20 defenders have by far been the best public defenders. Many
21 of the old have been ineffective in many cases. It would
22 allow the legislature to be flexible in dealing with this. In
23 the criminal code, it would allow them to set the standards
24 they want. They would not be bound. It would give them flex-
25 ibility and I feel that it would still give the protection to

1 the individual. As I said, I have spoken about this entire
2 section to the past president of the Montana Bar Association,
3 and he thought it would be a very good step forward. As a
4 defense attorney on this, it's something that I would like to
5 see. Our committee felt this would be a great improvement in
6 our present law. Thank you.

7 CHAIRMAN GRAYBILL: Is there other discussion?
8 Very well. The issue arises on Mr. Arness' motion to add the
9 words, civil cases and in all criminal cases not amounting to
10 a felony, on line fifteen. The effect of this would be to
11 make it impossible for a defendant to waive the jury trial on
12 a felony. So many as shall be in favor of Mr. Arness' motion,
13 say Aye.

14 DELEGATES: Aye.

15 CHAIRMAN GRAYBILL: Opposed, No.

16 DELEGATES: No.

17 CHAIRMAN GRAYBILL: The motion fails. We are now
18 back discussing section twenty-six. Mr. Holland, do you have
19 an amendment?

20 DELEGATE HOLLAND: Yes, Mr. Chairman.

21 CHAIRMAN GRAYBILL: Do you want the clerk to read
22 your amendment, Mr. Holland?

23 DELEGATE HOLLAND: Yes, Mr. Chairman.

24 CHAIRMAN GRAYBILL: Mr. Clerk.

25 CLERK HANSON: (Reading) Mr. Chairman. I move to

1 amend section twenty-six, page nine, line fourteen, following
2 the word, shall, by inserting quote, in all cases in law and
3 equity end quote. Signed, Holland.

4 CHAIRMAN GRAYBILL: What line was that?

5 CLERK HANSON: Line fourteen on page nine.

6 CHAIRMAN GRAYBILL: In all cases in law and equity?

7 CLERK HANSON: Yes, sir.

8 CHAIRMAN GRAYBILL: Very well. Mr. Holland has an
9 amendment, the purpose of which is to add on line fifteen,
10 section twenty-six, after the word cases, the words, in law
11 and equity so that the phrase reads: but in all cases in law
12 and equity upon the default of appearance, etc., is that right,
13 Mr. Holland?

14 DELEGATE HOLLAND: Yes.

15 CHAIRMAN GRAYBILL: Very well. Mr. Holland.

16 DELEGATE HOLLAND: Mr. Chairman. I have discussed
17 this matter with Mr. Dahood. What I wanted to do is clarify
18 the right of a person, in a civil case, to have a trial in
19 either law or equity. Mr. Dahood has stated that he personally
20 doesn't have any objection. I don't know if he can speak for
21 the committee. I wanted this for clarification purposes.

22 CHAIRMAN GRAYBILL: Is there other discussion?

23 Mr. Dahood.

24 DELEGATE DAHOOD: Mr. Chairman. Mr. Holland approach-
25 ed me with respect to the amendment. I indicated to him that



1 I certainly had no objection. I think I should explain that
2 within the civil area of the law in the state of Montana, as
3 well as in all other jurisdictions, we have a certain area
4 that we call the area of equity. Although, within that area,
5 you may have the same major concern with respect to the rights
6 of the individual from a civil standpoint, nevertheless,
7 traditionally, the courts have said that in those areas, you
8 do not have a right to a jury trial. Sometimes, in those
9 areas that we referred to as the areas of equity, the conse-
10 quences may be more severe than they are in those civil areas
11 of the law where the right to a jury trial is permitted. I
12 see nothing in Mr. Holland's amendment that is going to cause
13 any particular problem in the administration of justice. It
14 may well improve it because within this so-called area of
15 equity, in the event that there are not any fact questions
16 for a jury to decide and what is before the court is solely
17 a matter of law, a question for a trained judge to answer, you
18 would not have the right to a trial by jury because a jury
19 is basically the judges of the facts. Moreover, under our
20 rules of civil procedure, even though we indicate in our
21 Bill of Rights that every citizen is entitled to a jury trial,
22 still that individual citizen or party litigant must invoke
23 that right by making demand, at the appropriate point in the
24 civil court proceedings, that he have a jury trial. In most
25 equity actions, I am satisfied that counsel representing the

1 respective parties, would probably not invoke the right to a
2 jury trial. As Mr. Holland has indicated by his amendment,
3 there may very well be cases within the area of equity, where
4 the fact dispute is very serious and very complex, and a fact
5 dispute that traditionally should be decided by a jury. I
6 think I speak on behalf of my committee. I have looked in the
7 direction of the committee members that are on the floor. I
8 don't see anyone disagreeing with the statements that I have
9 made and, consequently, on behalf of the committee, we do not
10 oppose the amendment proposed.

11 CHAIRMAN GRAYBILL: Mr. Arness.

12 DELEGATE ARNESS: May I ask Mr. Holland a question?

13 CHAIRMAN GRAYBILL: Mr. Holland, will you yield?
14 Get Mr. Holland.

15 DELEGATE ARNESS: I guess he doesn't yield. Thank
16 you, Mr. Chairman.

17 CHAIRMAN GRAYBILL: Mr. Davis, you take over and
18 we'll get Mr. Holland back.

19 DELEGATE DAVIS: Mr. President and fellow delegates.
20 Don't leave, Mr. Dahood; I might want to ask you a question.
21 I oppose the majority committee who has had such a well thought
22 out and well reasoned proposal, abandoning their position so
23 easily on this matter of in law or in equity. As long as
24 this committee didn't have the opportunity -- You can sit
25 down; I haven't got a question yet, Wade. No, go ahead. It

1 comes to mind that the traditional procedure that has been
2 established in our courts for a long time -- we don't know;
3 it hasn't been explained by Delegate Holland or by Delegate
4 Dahood in abandoning the principle position. What are we
5 going to have this extend to? Are we going to have it extend
6 to the equitable matters of child custody cases and have the
7 jury sit in on such matters as this? On dependent neglected
8 children? On adoption matters? On accounting -- complicated
9 accounting procedures that are equitable matters? On title
10 matters? Quiet title actions that are equitable matters,
11 principally complicated legal proceedings, where the law is
12 what will prevail, and there are not any questions of fact?
13 I would seriously resist changing the language of the present
14 constitution in this regard without some strong comments and
15 a strong position in this proposal, or some strong reasoning
16 in this journal as to what it's intended to effect and what
17 it isn't intended to effect. The traditional concept, as you
18 all know in jury trials and civil cases, is the jury determines
19 the factual situation and the court determines the law. If
20 you have a question and it's a legal matter, then you have no
21 need for a jury and they cannot make any determination. They
22 have to follow the law or it's a mistrial. So, I support the
23 majority proposal as it's written, and oppose the proposed
24 amendment by my good friend, Delegate Holland, from Silver
25 Bow County. Thank you.

1 CHAIRMAN GRAYBILL: Mr. Arness.

2 DELEGATE ARNESS: I see Mr. Holland is back. My
3 question went to what Mr. Davis was talking about just now. I
4 was wondering particularly what equity matters you had in
5 mind. Is it divorce, quiet title or accounting, or what is
6 it that you're after here?

7 DELEGATE HOLLAND: All equity matters, Mr. Arness.
8 Divorce, I might state for you and Mr. Davis, has always been
9 a statutory matter as I understand it. It isn't an equity
10 matter at all. What I'm talking about are factual questions.
11 As lawyers all know, law in England grew up in two courts;
12 one, the equity, the ecclesiastical court in which no jury
13 trial was granted; the other one is the common law system in
14 which jury trial is always granted. Now, for some strange
15 reason, I think this is the traditional language that is in
16 here. The right of jury trial shall be secured to all and
17 remain inviolate. For some strange reason, the Montana court
18 has held in equity matters -- and I'm not talking about divorce;
19 I'm talking about equity matters, factual questions like an
20 equity question on a contract. Supposing you claim the right
21 to set aside a contract as distinguished from a breach of a
22 contract. The court did not grant that one, because it grew
23 up in equity, a jury trial and does grant it in the other. I
24 say that a jury should be granted in all matters, whether they
25 come out of ecclesiastical courts or otherwise. Mr. Davis

1 speaks of child custody. I would take it he was talking about
2 the state taking the children away from the mother, rather
3 than the custody case in a divorce action. Those are statutory
4 in matter and wouldn't be covered by an equity action. It's
5 only those actions that came out of equity as I had referenced
6 to. This is where they have been depriving for years, people
7 in those cases for a jury trial. Now, they want to put this
8 language in so that any contested action that came out of
9 the old common law or the equity system, you get the right to
10 jury trial. It seems to me that you got two things. You
11 got a contract; one, you're going to reform it and you can't
12 have a jury; the other, you have a breach and you do have a
13 jury. It doesn't make sense to me. I say that if you've got
14 a factual question, you should be entitled to a jury in
15 either action. I'm not referring, of course, to all these
16 statutory actions at all. Divorces wouldn't be covered.
17 Child custody -- the state taking away custody of children
18 and things like that wouldn't be affected at all. It would
19 only be in the actions coming out of equity that this would
20 go to.

21 CHAIRMAN GRAYBILL: Mr. Arness.

22 DELEGATE ARNESS: May I ask another question on it?

23 CHAIRMAN GRAYBILL: Yes.

24 DELEGATE ARNESS: Mr. Holland. It has been my
25 understanding that the court has ruled that these matters that

1 you talked about as statutory are, in fact, equity matters --
2 quiet title, accounting, divorce, this type of thing. Aren't
3 they considered equity? And, isn't that what you had in
4 mind? That's not what you had in mind?

5 DELEGATE HOLLAND: Quiet title, Mr. Arness, I believe
6 is equity but divorce isn't. Divorce is statutory. In other
7 words there was no divorce in the ecclesiastical court so it
8 is not considered an equitable action. Title to real estate --
9 the quiet title to real estate -- maybe I should do more
10 research on quiet title, but I believe it is equitable in
11 action. Now, what I'm saying to you, Mr. Arness, is, if we
12 have a factual question -- If, for instance, your client has a
13 deed, he claims it's a good deed. My client resisted that this
14 is a good deed. Now, why can't a jury hear the facts and rule
15 in that matter rather than having the court do it? The fact
16 that we lawyers have been making mistakes for a thousand years
17 doesn't mean we should continue to make mistakes. What I'm
18 saying is that I'm a very strong supporter of jury trials, and
19 I'm saying that in all factual cases -- what logic or what
20 reason is there in saying that because they did it in England
21 a thousand years ago, we have to continue to do it today? I
22 am saying that if we have a factual question and it comes out
23 of equity, a person should have a right to a jury trial just
24 the same as if it came out of the common law court.

25 DELEGATE ARNESS: Mr. Chairman.

1 CHAIRMAN GRAYBILL: Mr. Arness. Let's have it quiet
2 please in the chamber.

3 DELEGATE ARNESS: Apparently, Mr. Holland and I have
4 a disagreement on this. It's my understanding, at any rate,
5 that the chancellor's courts were not necessarily the ecclesi-
6 astical courts, and that equity would comprehend, under our
7 system, all things that are not criminal in nature or not mat-
8 ters at law as we talk of things at law. I'm not talking
9 against the proposal, but it seems to me that what we're doing
10 is granting trial by jury in all cases regardless of what they
11 are and of what nature they may be. It seems to me that it's
12 something that hasn't been considered by the committee. I just
13 think that the convention should be aware that this is something
14 that doesn't seem to have been fully considered. Thank you,
15 Mr. Chairman.

16 CHAIRMAN GRAYBILL: Mr. Foster.

17 DELEGATE FOSTER: Mr. Chairman and fellow delegates.
18 I would like to respond to both the points of Delegate Davis
19 and Delegate Arness. I think that, speaking for myself, the
20 reason that I am so readily willing to accept this amendment
21 is because when I considered it -- and I think most other
22 nonlawyers would approach it the same way -- When I read the
23 words, the right of trial by jury shall be secured to all,
24 that is the way I interpreted it. So, when additional wording
25 is put in there to further clarify the fact that, in truth,

1 trial by jury will be secured to all at their request, this is
2 the reason that I support the question without a great deal of
3 deliberation or consideration. That was my understanding when
4 we first presented the section and when question is brought
5 that, in fact, maybe that wording isn't sufficient to secure a
6 trial by jury to all, then I support that position. Thank you,
7 Mr. Chairman.

8 CHAIRMAN GRAYBILL: Mrs. Cross.

9 DELEGATE CROSS: Mr. Chairman. I'm not one of the
10 fraternity of attorneys, but according to Webster's dictionary,
11 there is a third definition of this word equity which raises
12 some questions in my mind and perhaps one of them could clarify
13 it. It says the money value of a property or of an interest
14 in a property in excess of claims or liens against it; a risk
15 interest or ownership right in property. I'm really puzzled
16 by this and I really would like to know what they mean when
17 they put in the word equity.

18 CHAIRMAN GRAYBILL: Mr. Dahood.

19 DELEGATE DAHOOD: Mr. Chairman. In response to the
20 question of Delegate Cross, the courts traditionally have re-
21 ferred to certain cases as falling within the ambit of equity,
22 and as Delegate Arness has pointed out, it stems from the jur-
23 isdiction of the chancellor's court in England. In 104 Montana,
24 in a case that involved this question, the Supreme Court of
25 the State of Montana did say that the conditions that existed

1 with respect to the distinction between equity and law shall
2 pertain notwithstanding the constitutional provision that you
3 have before you, and the supreme court ruled that the framers
4 of our constitution did not intend to put aside the distinction
5 between the law and the equity insofar as the jurisdiction of
6 the court is concerned. Our court indicated that there is no
7 right to a trial by jury, notwithstanding this constitutional
8 section, in those cases that fall within the jurisdiction of
9 the common law chancellor's court. Question, why did we not
10 expand it in the committee? One, we had no delegate proposals.
11 Two, we did not have a citizen suggestion. Three, perhaps
12 sometimes, lawyers are timid in dealing with the broad scope
13 of their profession. In a particular case, where we represent
14 an individual client, we don't know the meaning of the word
15 timidity. We're out to represent our client to the fullest
16 extent of our ability, our energy and the law. But, when we
17 are dealing in these procedural matters, we do not want to
18 bring about changes that some may consider to be drastic.
19 There could be some problems and Delegate Davis has pointed to
20 some of the problems that we might have. Precisely, how would
21 that particular right be restricted so as not to apply to
22 certain cases where a trial by jury would not serve the cause
23 of justice? Of course, we're talking about the domestic
24 relations suit, the divorce matter, the separate maintenance
25 matter, the child custody case. As Delegate Holland has indi-

1 cated, it is not his intention to have that particular right to
2 trial by jury apply to that type of case. I think we have
3 made the record here this morning with this dialogue and this
4 debate, so that if the amendment is adopted, it is not going to
5 be applied to those situations. The fact, nevertheless, does
6 remain true as Delegate Holland has pointed out. It does
7 happen on occasion in cases that are denominated equity cases,
8 simply because traditionally, they were within the jurisdiction
9 of the old chancellor's court where the fact controversy is
10 won that under our American concept of justice, the citizens
11 of the community should resolve and decide for the citizens
12 in controversy. I cannot stand in opposition to the amendment
13 because the amendment would serve, in certain areas of the law,
14 the best interests of the citizens. Other than that, I'm not
15 prepared to make any additional comments, and I hope that my
16 colleague, Louise Cross, is satisfied with my answer. She
17 doesn't know but thank you anyway, Mr. Chairman.

18 CHAIRMAN GRAYBILL: Mr. McDonough.

19 DELEGATE McDONOUGH: I rise in opposition to the
20 amendment. I think it's better taken care of by the supreme
21 court and its rule making authority, or taken care of by stat-
22 ute. Actually, it has been working fairly well for five hun-
23 dred years. If there is a substantial question of fact in
24 most equity cases -- he isn't required to -- a judge will call
25 a jury to decide that question of fact. This is a substantial

1 departure over what the present practice is, and it might sub-
2 stantially increase the cost of the counties as to juries. I
3 think it should be decided by the legislature.

4 CHAIRMAN GRAYBILL: Mr. Berg.

5 DELEGATE BERG: Mr. Chairman. I want to call your
6 attention to the fact that equity is not just limited to some
7 of the matters that have been discussed here so far. It in-
8 cludes, among other things, interpretation of instruments
9 such as wills. It includes the construction of contracts. It
10 includes the cancellation of contracts or other instruments
11 of record. It includes the reformation of those contractual
12 relationships between individuals. It includes matters of
13 trust. All of these are considered, inherently, within the
14 jurisdiction of equity. Now, I suppose at least in our court
15 system in Gallatin and Park county, that there are at least
16 twice -- perhaps three times -- as many equity cases tried as
17 actions at law. Generally speaking, when we're speaking of
18 actions at law, we're looking at money damage. We're looking
19 at negligence cases. We're looking at actions to recover debt.
20 I believe that these actions constitute less than half of the
21 matters considered in the district courts today. If the district
22 court was required to have a jury in all equity cases, then I
23 think it will cause considerable congestion on court calendars
24 and this could raise a serious problem just in the adminis-
25 tration of justice. I call this to your attention for your con-

1 sideration.

2 CHAIRMAN GRAYBILL: Very well. The issue arises on
3 Mr. Holland's motion. Mr. Holland, do you want to close?

4 DELEGATE HOLLAND: Yes. I just have this to say to
5 the delegates. Mr. Berg and Mr. McDonough and Mr. Davis and
6 Mr. Arness have all spoken about this right to jury trial. I
7 think if you listened closely to them, what they said was that
8 we did it this way for five hundred years, so why improve it
9 now. I suggest that we're getting all kinds of criticism for
10 not making improvements. We're not going to congest the calen-
11 dar. We may add a little expense, but we're going to get more
12 justice and I don't see any reason for resisting something
13 just because it's expensive if we're going to get better just-
14 ice. I submit there never was a good reason for it. The
15 original convention wanted jury trials, obviously, and the
16 courts overruled it. I think if we make it clear here, we'll
17 be able to have a jury trial in every contract action, whether
18 it's cancellation, reformation or breach. Why should your
19 client be deprived of the right to a trial by jury just because
20 the English system did it that way? I submit that the jury
21 trial is the most important bulwark a citizen has in enforcing
22 his rights and we should extend it equitable actions.

23 CHAIRMAN GRAYBILL: Very well. The question is on
24 Mr. Holland's amendment to section twenty-six. He would add on
25 line fourteen a phrase so that the sentence would read: The

1 right of trial by jury shall, in all cases in law and equity,
2 be secured to all, etc. So many as shall be in favor of Mr.
3 Holland's motion, please say Aye.

4 DELEGATES: Aye.

5 CHAIRMAN GRAYBILL: Opposed, No.

6 DELEGATES: No.

7 CHAIRMAN GRAYBILL: So many as are in favor, please
8 vote Aye on the voting machines. So many as are opposed, please
9 vote No. Have all the delegates voted? Does any delegate
10 wish to change his vote? The vote being forty-four against
11 and thirty-one for, the motion fails. Very well. We're
12 still discussing section twenty-six. Are there further amend-
13 ments? Members of the committee, you have before you on the
14 recommendation of Mr. Campbell, that when this committee does
15 arise and report after having had under consideration section
16 twenty-six, that it recommend the same be adopted. All in
17 favor of that motion, say Aye.

18 DELEGATES: Aye.

19 CHAIRMAN GRAYBILL: Opposed, No.

20 (No response)

21 CHAIRMAN GRAYBILL: So ordered. It's adopted.
22 Section twenty-seven, Mr. Clerk.

23 CLERK SMITH: (Reading) Section twenty-seven,
24 Imprisonment for Debt: No person shall be imprisoned for debt
25 except in the manner prescribed by law, upon refusal to deliver

1 up his estate for the benefit of his creditors, or in case of
2 tort, where there is strong presumption of fraud. Section
3 twenty-seven, Mr. Chairman.

4 CHAIRMAN GRAYBILL: Mrs. Sullivan.

5 DELEGATE SULLIVAN: Mr. Chairman. I move that when
6 this committee does rise and report after having had under
7 consideration section twenty-seven of Proposal Eight, it recom-
8 mend that the same be adopted. Mr. Chairman.

9 CHAIRMAN GRAYBILL: Mrs. Sullivan.

10 DELEGATE SULLIVAN: The committee voted unanimously
11 to retain the former Article Three, section twelve, unchanged.
12 It was felt that the provision is an adequate safeguard for
13 the right of one in debt to be free from imprisonment. No
14 delegate proposals were received on this provision. Mr. Chair-
15 man.

16 CHAIRMAN GRAYBILL: Mr. Joyce.

17 DELEGATE JOYCE: Mr. Chairman. I move that section
18 twenty-seven be amended in line twenty-five on page nine, by
19 inserting a period after the word, debt, and deleting the rest
20 of the sentence.

21 CHAIRMAN GRAYBILL: Mr. Joyce has proposed an amend-
22 ment to section twenty-seven by putting a period after the
23 word, debt, so it reads: No person shall be imprisoned for
24 debt and then deleting the words, except in the manner prescribed
25 by law, upon refusal to deliver his estate, etc.

1 DELEGATE JOYCE: Mr. Chairman.

2 CHAIRMAN GRAYBILL: Mr. Joyce.

3 DELEGATE JOYCE: I note that the recent North Dakota
4 Constitution did just this. The additional language is obsolete.
5 I don't think anybody has been imprisoned for debt for hundreds
6 of years. I think it ought to be made clear that you can't be
7 imprisoned just for being in debt. If you committed some
8 crime, you've defrauded somebody, you can be prosecuted crim-
9 inally and I think the archaic words in this section should be
10 deleted to recognize the modern facts of life, which everyone
11 agrees -- or at least I should think everyone now agrees --
12 that you shouldn't be thrown into debtor's prison. Thank you.

13 CHAIRMAN GRAYBILL: Mr. Murray.

14 DELEGATE MURRAY: Mr. Chairman. May I ask a couple
15 of questions of Mr. Joyce, please?

16 CHAIRMAN GRAYBILL: You may ask a series of questions
17 of Mr. Joyce.

18 DELEGATE JOYCE: I yield.

19 DELEGATE MURRAY: Would you anticipate, Delegate
20 Joyce, that there would be any problems under this section as
21 you propose to amend it, where you would have any circumstance
22 arising on a contempt of court which might arise out of a
23 debt?

24 DELEGATE JOYCE: No, I don't. As I understand it,
25 the power of the court to put you in jail for contempt, is when

1 you refuse to comply with the court's order. In those cases
2 where the court has the power to compel you to do something,
3 such as, I take it that you have in mind to support your child-
4 ren.

5 DELEGATE MURRAY: Right. And I also have in mind the
6 matter of investigation after a judgment is taken. You know,
7 where you call a judgment debtor in and the proceeding there.

8 DELEGATE JOYCE: It seems to me that when you call
9 people in on the supplementary proceedings you want to collect
10 a judgment because the fellow has made a fraudulent transfer,
11 why, you set aside the transfers. But, I don't think the court
12 has the power to put you in jail just because you won't pay
13 the judgment. I don't think he should have. I don't think
14 they have ever exercised it that way to my knowledge.

15 DELEGATE MURRAY: Then, it is not your intent to get
16 around those matters by making this amendment in any way, is
17 it?

18 DELEGATE JOYCE: No, absolutely not. I think that
19 the law should be that you just can't be imprisoned for a debt
20 period. If you refuse to deliver up your property for the
21 benefit of your creditors, if there are equitable procedures to
22 compel you to do so, then you have to institute an action in
23 the court, get an order of the court ordering you to do that.
24 If you don't do it, you're in contempt of court and the court
25 imprisons you then at that time just because you violated the

1 order of the court which the court has jurisdiction to impose
2 on you, but I don't think that really should ever be done either.

3 DELEGATE MURRAY: Thank you very much, Delegate Joyce.
4 After this dialogue, Mr. Chairman, I do not resist this amend-
5 ment on behalf of the committee.

6 DELEGATE AASHEIM: Mr. Chairman, may I ask Delegate
7 Joyce a question?

8 DELEGATE JOYCE: I yield.

9 DELEGATE AASHEIM: Mr. Joyce. I notice under section
10 twelve of Article Three, in the code there is an annotation
11 in 30 A.L.R. as to alimony or maintenance as debt within the
12 constitutional or statutory provisions against imprisonment.
13 Have you looked into that question or have you read the anno-
14 tation?

15 DELEGATE JOYCE: I haven't, but I would say this,
16 that I would guess that the annotation says that if the argu-
17 ment is made that you can't be imprisoned for failure to pay
18 alimony, that you cannot rely upon the constitutional prohibit-
19 ion that deprives you of being imprisoned for a debt.

20 DELEGATE AASHEIM: Will Mr. Joyce yield again?

21 DELEGATE JOYCE: Yes.

22 DELEGATE AASHEIM: I would imagine that also, but I
23 wondered if you had read the article referred to.

24 DELEGATE JOYCE: A truthful answer to it is that I
25 haven't, but I'll be glad to go out and get it and read it and

1 make you a bet that I'm right.

2 CHAIRMAN GRAYBILL: Mr. Drum. The Chair would like to
3 point out to the delegates that when you stand in the back like
4 that, it makes it very difficult for me to tell who's up. So,
5 I don't mind you talking to people, but will you please move
6 off behind the posts? I get a lot of criticism from the back
7 row for not seeing them. The main reason is that there's too
8 much traffic back there. I don't mind you going in and out,
9 but when you're not doing anything, I wish you'd stay away
10 from the back row so I can see who's back there. Now, Mr.
11 Berg.

12 DELEGATE BERG: Will Mr. Joyce yield to a question?

13 DELEGATE JOYCE: Mr. President, I will.

14 DELEGATE BERG: Would you object to an exception for
15 the support and maintenance of dependents?

16 DELEGATE JOYCE: Well, I don't think you should be
17 able --

18 DELEGATE BERG: Go ahead.

19 DELEGATE JOYCE: Would I object to amending something
20 in that connection?

21 DELEGATE BERG: Yes, including that in the amendment.

22 DELEGATE JOYCE: No, I wouldn't, because it seems to
23 me that you can't be imprisoned for not supporting your child-
24 ren per se. What they have to do is that they charge you with
25 a crime, in one instance, say for not supporting your dependents.

1 That's a misdemeanor and you're charged with the crime and you
2 can be imprisoned for that. Secondly, if there's an order of
3 the court and you're compelled to pay something and you don't
4 pay it, they put you in jail because you're in contempt of
5 court. It doesn't seem to me that they should be able to put
6 you in prison for debt, or for failure to deliver up your
7 estate, and this gives the legislature the authority to put
8 you in jail except in the manner prescribed by law, for debt,
9 and I don't think you should ever have to go to jail for not
10 paying your debts.

11 DELEGATE BERG: Mr. Chairman.

12 CHAIRMAN GRAYBILL: Mr. Berg.

13 DELEGATE BERG: As I construe this, a debt created by
14 a court decree or a court judgment, can be distinguished in
15 this respect. A debt for payment of an obligation, such as
16 a contractual obligation, is one kind of a debt. But, a debt
17 created for the support and maintenance of minors, or for the
18 support and maintenance of a divorced wife, is also by court
19 decree and, traditionally, that has been enforceable by the
20 contempt proceedings inherent in the court, whereas an ordinary,
21 civil debt is not. If we're to treat this word, debt, without
22 that distinction, we may very well be preventing the court
23 from enforcing its decrees in domestic relation matters. Thank
24 you.

25 CHAIRMAN GRAYBILL: Mr. Campbell.

1 DELEGATE CAMPBELL: Mr. Chairman. I rise in support
2 of the Joyce amendment. One of the finest legal minds in
3 Montana is Professor Larry Elison who appeared before our com-
4 mittee in extensive hearings. After we had completed our
5 final draft, I sent it to him and he had very few comments to
6 make. However, in this particular section, it was his recom-
7 mendation -- and I don't know that Delegate Joyce had talked
8 to him -- that after the word, debt, a period be placed. In
9 discussing this with him, he said it would in no way affect
10 the contempt powers of the court in divorce matters, in ali-
11 mony matters. He felt it was as the law should be, and he
12 fully supported this amendment. I wholeheartedly agree and
13 would support Delegate Joyce and recommend that it be adopted
14 as amended.

15 CHAIRMAN GRAYBILL: Mr. Jacobsen.

16 DELEGATE JACOBSEN: Mr. President, would Mr. Joyce
17 yield to a question?

18 CHAIRMAN GRAYBILL: Mr. Joyce.

19 DELEGATE JOYCE: I yield, Mr. President.

20 DELEGATE JACOBSEN: Now, it states, no person shall
21 be imprisoned for debt. Aren't there laws on the books already
22 that say, except in the manner prescribed by law? What would
23 be wrong with leaving, except in the manner prescribed by law,
24 in this first sentence and delete the rest?

25 DELEGATE JOYCE: Well, I suppose it's a philosophical

1 proposition. I just don't think that the legislature should
2 ever be able to pass a law where they would be able to put you
3 in jail for a debt. I think that the concept of the debtor's
4 prison is lost in antiquity.

5 DELEGATE JACOBSEN: One more question, Mr. President?

6 CHAIRMAN GRAYBILL: Yes, sir.

7 DELEGATE JACOBSEN: Mr. Campbell spoke of the divorcee.
8 I have a personal relationship with a party that put her former
9 husband in jail for nonpayment of alimony. This did force him
10 to pay it for a while. Now, is this in the law right now?

11 DELEGATE JOYCE: Yes, and it would continue to be
12 in the law under my amendment because -- If you only know of
13 one case, I know of hundreds, and every lawyer here knows of
14 thousands. That's one of the biggest social problems of the
15 day, I suppose. The way you put people in jail for not support-
16 ing their children is that you get jurisdiction over them,
17 you cite them into court, you have a hearing, you have the
18 court make an order ordering him to pay a certain amount and
19 then, if they don't pay it, they're in contempt of the court.
20 That's how they're jailed. You just can't go out and pick
21 them up for not supporting them without some due process of
22 law. My amendment wouldn't affect it in any way. I think what
23 the framers of the original constitution -- I think they
24 borrowed this from Colorado. At that time, they were still
25 putting people in jail for different types of fraud on creditors.

1 They don't do it anymore and they shouldn't be able to do it
2 anymore. That's why I offered the amendment. Our sister state
3 of North Dakota has done it, and it seems to me that that's
4 the way it should be done.

5 CHAIRMAN GRAYBILL: Mr. Davis.

6 DELEGATE DAVIS: Mr. Joyce, would you yield to a
7 question?

8 CHAIRMAN GRAYBILL: Mr. Joyce.

9 DELEGATE JOYCE: Mr. Chairman, I yield.

10 DELEGATE DAVIS: Now, Mr. Joyce, I want it thoroughly
11 understood for the record that if I vote for your amendment
12 and I don't pay my income tax, which is a debt, I cannot be
13 imprisoned for that. Is that correct?

14 DELEGATE JOYCE: No, it's not correct.

15 DELEGATE DAVIS: Why not? Isn't that a debt?

16 DELEGATE JOYCE: Because the state of Montana, I
17 don't think, does make it a criminal offense not to pay your
18 income tax now, but how they get you in the federal level is
19 that they don't put you in jail for not paying the tax, they
20 put you in jail for making a false return under oath, under
21 perjury. As I understand, the federal law is that if you
22 report your income and, like in your case, you owe several
23 thousands of dollars (laughter) of federal income tax --

24 DELEGATE DAVIS: That's over a ten year period.

25 DELEGATE JOYCE: -- and you report that you owe this

1 money but you just don't have it to pay, that's a civil matter.
2 They can come in and seize your property to collect it, but
3 they can't put you in jail for it. I think that's proper.

4 DELEGATE DAVIS: Thank you, Delegate Joyce.

5 CHAIRMAN GRAYBILL: Mr. Dahood.

6 DELEGATE DAHOOD: Mr. Chairman. Would Mr. Joyce
7 yield to a question?

8 CHAIRMAN GRAYBILL: Mr. Joyce.

9 DELEGATE JOYCE: I yield.

10 DELEGATE DAHOOD: Mr. Joyce. I must start with an
11 apology. I stepped out of the room in connection with a phone
12 call when you moved the amendment. May I inquire, then, for
13 the record and for my own satisfaction so that I may consider
14 voting for your amendment, what you are saying is this. No
15 citizen shall be imprisoned for debt as such, but if some par-
16 ticular payment is ordered by the court and it is the determin-
17 ation of the court that that individual has the ability to
18 pay and refuses to do so, he at that point can be cited for
19 contempt of that court order. For that contempt, the inherent
20 power of the court to judge a person to be in contempt, he
21 can be ordered to jail until he purges himself of that contempt
22 either by living up to some condition laid down by the court,
23 or paying the amount involved. Is that correct?

24 DELEGATE JOYCE: Well, let me answer it this way.

25 We get back to the distinction between law and equity. I think

1 the only way they put you in jail now is if the court has some
2 equity jurisdiction where they have the power to compel you to
3 do something. If you don't do it, you're in contempt of court
4 and they send you to jail. I don't want the legislature or
5 any court, just because I don't pay somebody's judgment at
6 law -- Say, you sue me for five hundred dollars and get a judg-
7 ment against me. As I understand the law now, no court has
8 the right or the power to compel me to pay that judgment. You
9 have to collect it the best way you know how and I don't think
10 any court has the right to put me in jail for not paying it
11 now, and I don't think they should have in the future.

12 DELEGATE DAHOOD: Mr. Chairman. May I ask Mr. Joyce
13 to yield to another question? Will you yield?

14 DELEGATE JOYCE: I yield.

15 DELEGATE DAHOOD: In a typical case where there is a
16 judgment for a certain sum of money, and in order to enforce
17 that judgment, a writ of court is issued so that the defendant
18 or debtor is examined in aid of execution and it is found that
19 he is concealing assets that can be used to pay that amount
20 of debt. As you well know, under present law, if he refuses
21 to disclose the whereabouts of those assets for execution so
22 that debt can be paid, he can be judged in contempt of court
23 and placed in jail until he purges himself. By your amendment,
24 would that situation then be prohibited?

25 DELEGATE JOYCE: Yes, I think it would.

1 DELEGATE DAHOOD: You think it would?

2 DELEGATE JOYCE: As I understand it, the proceedings
3 supplementary to judgment are equitable proceedings. You cite
4 the man and you ask him where his property is, and if he --
5 if it is discovered that he is concealing his assets, why,
6 apparently under the current law, the argument could be made
7 that he could be jailed for that. If he refuses to disclose
8 where his assets are, in answer to a legitimate question, he
9 could be jailed for contempt of court for not following an
10 order of the court. My point is that I don't think you should
11 be able to jail anybody for debt.

12 DELEGATE DAHOOD: Mr. Chairman. One of the inherent
13 basic powers of any judicial tribunal is the power to enforce
14 its orders, its decrees and its judgments. If the day should
15 ever come when a court does not have that power to enforce its
16 orders, its decrees and its judgments, then we are substituting
17 lawlessness for the law. Under the answer that has been given
18 to us by Delegate Joyce, I must, in the interests of law and
19 order, oppose the amendment.

20 CHAIRMAN GRAYBILL: Mr. Romney.

21 DELEGATE ROMNEY: Mr. Chairman. May I ask a question
22 of Mr. Dahood?

23 CHAIRMAN GRAYBILL: Mr. Dahood.

24 DELEGATE DAHOOD: I yield, Mr. Chairman.

25 DELEGATE ROMNEY: Mr. Dahood. As a layman, I hear

1 all through this convention about the inherent powers. Would
2 you kindly advise me where the court gets its inherent power?

3 DELEGATE DAHOOD: The court, Mr. Romney, receives
4 its inherent powers from the traditional concept under which
5 the courts have developed through the common law which has
6 been recognized in the American jurisdiction. The courts do
7 have a certain amount of power that is given to them by stat-
8 ute, but the framers of that power assume that within the
9 exercise of the type of justice that we have, there are certain
10 powers that certainly must necessarily run with the court in
11 order that they be able to function. If you were to take away
12 these particular powers for the courts to act as courts, then
13 you would not have any way of enforcing what the courts do in
14 resolving controversy between citizens. Then, the courts
15 would cease to function effectively.

16 DELEGATE ROMNEY: Mr. Chairman, another question.

17 CHAIRMAN GRAYBILL: Yes, sir.

18 DELEGATE ROMNEY: That means that the inherent power
19 is not a power bestowed upon the courts -- not just in this
20 case, but in any case -- by the people.

21 DELEGATE JOYCE: Yes, impliedly, it is bestowed by
22 the people so that the court can function with all of the
23 power and authority the court must necessarily have in our
24 type of society. It is not defined explicitly, simply because
25 the citizens, by framing the constitution that creates the

1 court, leave it up to the court to take those powers that it
2 must necessarily have, short of actually violating the basic
3 rights of the people as set forth in the constitutional docu-
4 ment itself. For example, in our Bill of Rights -- Many of
5 the provisions in that Bill of Rights are limitations upon
6 the power of the court. As long as the court does not con-
7 flict with those particular limitations, that court has what-
8 ever power is necessary to function as a court with authority
9 to enforce its decrees, its orders and its judgments.

10 DELEGATE ROMNEY: Mr. Chairman, a couple of other
11 questions.

12 CHAIRMAN GRAYBILL: Yes, Mr. Romney.

13 DELEGATE ROMNEY: In that case, then, the court can,
14 by these inherent powers, make its own rules, avoids the con-
15 stitutional inhibition against accepting payment for per diem
16 and mileage, expends money that is not appropriated and things
17 of that kind, -- It has an inherent power because it is a
18 court?

19 DELEGATE JOYCE: No, Mr. Romney, the court does not
20 have any inherent power to do anything that violates the con-
21 stitution. No branch of government has that power. The court
22 will determine whether or not the course of conduct that has
23 been questioned violates the constitution, but the court does
24 not have any power to violate the constitution. The supreme
25 and appellate courts have always stated in a particular case,

1 regardless of the fact controversy, regardless of the individual
2 involved, no matter how despicable the crime. What is before
3 the court at that particular time for judgment, is the consti-
4 tutional document itself, to make sure that the rights of the
5 citizens are fully protected. The court cannot, does not and
6 will not violate the constitution.

7 DELEGATE ROMNEY: That is, it should not.

8 DELEGATE DAHOOD: And should not. We corrected one
9 of those incidents yesterday.

10 CHAIRMAN GRAYBILL: Mr. Loendorf.

11 DELEGATE LOENDORF: Will Mr. Dahood yield?

12 CHAIRMAN GRAYBILL: Mr. Dahood.

13 DELEGATE DAHOOD: I yield, but this isn't my amend-
14 ment. (Laughter)

15 DELEGATE LOENDORF: That's right, but you have op-
16 posed it and your reason for opposing it is the last answer
17 given by Mr. Joyce, is that correct?

18 DELEGATE DAHOOD: That's correct, Jerry.

19 DELEGATE LOENDORF: Are you absolutely sure that
20 his answer was accurate?

21 DELEGATE DAHOOD: I'm not absolutely sure it was ac-
22 curate, but it's reflected upon the journal, and that is going
23 to aid whoever should interpret that particular provision in
24 reaching some conclusion. I think that if they look to our
25 journal, to our records of the dialogue that took place, they

1 would take Mr. Joyce's answer and say this is what was meant
2 by it. If that's what is meant by it, that is destructive to
3 the judicial process.

4 DELEGATE LOENDORF: Thank you. Mr. Chairman.

5 CHAIRMAN GRAYBILL: Mr. Loendorf.

6 DELEGATE LOENDORF: Not being on the committee and
7 not having the benefit of the research, I'm going to make my
8 guess here too. I'm going to support Mr. Joyce's amendment.
9 I believe there's a real distinction between a debt and an
10 obligation a court finds to exist based on law. For example,
11 if I owe Mr. Dahood a hundred dollars, or he believes I do, he
12 sues me in court and gets a judgment against me. The court
13 merely finds and determines that I owe him a hundred dollars,
14 but it does not order me to pay that hundred dollars, and could
15 not hold me in contempt for not complying with that judgment.
16 In a case where we have a divorce, for example, -- I'll have
17 to use someone else assuming I'm not married. Perhaps I can
18 use Mr. Noble. (Laughter) Assuming he was divorced and a
19 court ordered him to pay so much money in child support or al-
20 imony -- This is an obligation, it seems to me, a court finds
21 based on law and not by a contractual obligation between two
22 parties and then not based on a debt, as I understand it.
23 Therefore, I support Joyce's amendment.

24 CHAIRMAN GRAYBILL: Mr. Joyce.

25 DELEGATE JOYCE: Mr. Chairman, may I close?

1 CHAIRMAN GRAYBILL: No, not yet.

2 DELEGATE JOYCE: Well, let me explain then.

3 CHAIRMAN GRAYBILL: You may explain.

4 DELEGATE JOYCE: I yielded to several questions and
5 each time, I answered the question as perfectly elementary
6 that my amendment would not prohibit a court from putting some-
7 one in jail for contempt of court. Then, Mr. Dahood asked me
8 if I proposed to do away with what currently appears in the
9 constitution which, in effect, says that the legislature can,
10 by law, imprison me for refusal to deliver up my estate to pay
11 a debt. I say, yes I intended to provide that a court can
12 put me in jail for that particular offense, if it is an offense.
13 So, I really am not trying to destroy the entire judicial
14 system or get into the code words of law and order. I think
15 everyone is for law and order. I just thought that North
16 Dakota has done it and it just seems so elementary that you
17 shouldn't be imprisoned for debt per se, and that the courts
18 can still enforce obedience to their orders which they are
19 authorized by law to make.

20 CHAIRMAN GRAYBILL: Mr. Berg.

21 DELEGATE BERG: Mr. Chairman. I move that we pass
22 section twenty-seven until we reconvene after the noon hour.
23 Mr. Chairman.

24 CHAIRMAN GRAYBILL: Mr. Berg.

25 DELEGATE BERG: I'm unwilling to accept Mr. Joyce's

1 conclusions that debt would not include, for among other things,
2 alimony and support of minors, and that the court power to
3 hold one in contempt for failure to support his family is not
4 included within the term debt. I haven't read, nor has Mr.
5 Joyce, the annotation on that that appears in 30 A.L.R. at
6 page one thirty. I think that we'll all be better informed if
7 we review that annotation to determine this question.

8 CHAIRMAN GRAYBILL: Very well. The issue is on --
9 Mr. Dahood.

10 DELEGATE DAHOOD: I rise with some reluctance to
11 oppose the motion. My reason for it is this. There is nothing
12 wrong with the way in which the law is operating at the present
13 time. No one is being imprisoned for debt that violates the
14 United States Constitution and it violates the constitution of
15 the state of Montana. There is no cause for concern that the
16 particular language of this section is going to do anything to
17 interfere with the rights of any citizen of the state of Mon-
18 tana. I think my colleagues will have to admit that the law
19 is being administered at the present time, with due regard to
20 those rights that we hold precious in our society. No court
21 has abused its inherent power with respect to enforcing its
22 judgements, its orders and its decrees. We found no good
23 reason to change this particular language. Yes, we thought
24 about it. I suppose if you want to try and isolate some of
25 the words in that particular provision, you might be able to

1 force the tortured conclusion that has been enunciated on this
2 convention floor. But, by leaving the section exactly as it is,
3 we do nothing more than approve and ratify what has been done
4 until now. That is a basic concept for interpreting the in-
5 tent of constitutional revision when it is made. That is the
6 primary presumption that must be indulged in when a Constitu-
7 tional Convention affirms the language that has been in the
8 old constitution and is placed within the framework of the new
9 constitution. I see no need to change anything and for that
10 reason, I would oppose the motion of Delegate Berg whose
11 intention is certainly most laudible, so that we might decide
12 without any further discussion, the motion of Delegate Joyce.
13 I would submit that we should defeat both motions and leave
14 the law as it presently stands which is a good law and an
15 orderly law, and one that has not caused any problem in the
16 state of Montana. I oppose the motion, Mr. Chairman.

17 CHAIRMAN GRAYBILL: Mr. Berg.

18 DELEGATE BERG: Mr. Chairman. I shall be brief. I,
19 of course, just like Mr. Joyce and Mr. Dahood, do not want any
20 debtor prisons of any kind in Montana. I am in sympathy with
21 the position that no one should be jailed for that. But, I am
22 concerned as to what we mean by the term debt. I am not satis-
23 fied with the discourse that has taken place here on the floor
24 this morning. Indeed, I am afraid that if the interpretations
25 of the word debt in other constitutions is contrary to what Mr.

1 Joyce believes it to be, and if the courts are to look to this
2 convention floor at this debate, at the journal, for determin-
3 ing that question and they find that it is contrary to what
4 courts in other states have said, you have a serious problem
5 of interpretation. I simply want to be certain that that
6 question of interpretation is resolved without any question
7 whatsoever.

8 CHAIRMAN GRAYBILL: Very well. The question is on
9 Mr. Berg's motion to pass section twenty-seven until after
10 the noon recess. So many as shall be in favor of that, please
11 say Aye.

12 DELEGATES: Aye.

13 CHAIRMAN GRAYBILL: So many as shall be opposed, No.

14 DELEGATES: No.

15 CHAIRMAN GRAYBILL: The Noes have it. Very well. The
16 question is now on Mr. Joyce's motion. Do you want to close
17 again?

18 DELEGATE JOYCE: Well, I asked you if I could close
19 the last time and you said no.

20 CHAIRMAN GRAYBILL: I thought you did so though, but
21 go ahead, Mr. Joyce. (Laughter)

22 DELEGATE JOYCE: I'm just going to call the convent-
23 ion's attention to the Hawaii Constitution which says in
24 section seventeen, Article One, that there shall be no imprison-
25 ment for debt period. Alaska says that there shall be no im-

1 prisonment for debt. This section does not prohibit civil
2 arrests of absconding debtors, which is, I guess, somewhere in
3 between. So, I'm going all the way against the debtor prison
4 with Hawaii and North Dakota. As my good friend, Mr. Davis
5 says, I'm willing to let the hair go with the hide. I close.

6 CHAIRMAN GRAYBILL: Very well. The issue is on
7 Mr. Joyce's motion to put a period after the word debt and
8 delete the rest of section twenty-seven.

9 Mr. Romney.

10 DELEGATE ROMNEY: May we have a roll call vote?

11 CHAIRMAN GRAYBILL: All right. All in favor, vote
12 Aye on the voting machines. All opposed, vote No. Have all
13 the delegates voted? Does any delegate wish to change his
14 vote? Take the vote please.

15 (Tape Changed)

16 Aasheim	- Aye	Bates	- Abs
17 Anderson, J.	- Nay	Belcher	- Nay
18 Anderson, O.	- Nay	Berg	- Nay
19 Arbanas	- Aye	Berthelson	- Nay
20 Arness	- Nay	Blaylock	- Nay
21 Aronow	- Nay	Blend	- Nay
22 Artz	- Nay	Bowman	- Abs
23 Ask	- Nay	Brazier	- Nay
24 Babcock	- Abs	Brown	- Aye
25 Barnard	- Aye	Bugbee	- Abs

1	Burkhardt	- Abs	Hanson, R.	- Aye
2	Cain	- Aye	Harbaugh	- Aye
3	Campbell	- Abs	Harlow	- Aye
4	Cate	- Abs	Harper	- Aye
5	Champoux	- Nay	Harrington	- Abs
6	Choate	- Nay	Heliker	- Aye
7	Conover	- Nay	Holland	- Abs
8	Cross	- Aye	Jacobsen	- Nay
9	Dahood	- Nay	James	- Nay
10	Davis	- Aye	Johnson	- Nay
11	Delaney	- Nay	Joyce	- Aye
12	Driscoll	- Abs	Kamhoot	- Nay
13	Drum	- Abs	Kelleher	- Abs
14	Eck	- Nay	Leuthold	- Nay
15	Erdmann	- Nay	Loendorf	- Aye
16	Eskildsen	- Abs	Lorello	- Abs
17	Etchart	- Nay	Mahoney	- Abs
18	Felt	- Nay	Mansfield	- Nay
19	Foster	- Nay	Martin	- Abs
20	Furlong	- Abs	McCarvel	- Nay
21	Garlington	- Abs	McDonough	- Aye
22	Graybill	- Aye	McKeon	- Abs
23	Gysler	- Nay	McNeil	- Nay
24	Habedank	- Aye	Melvin	- Aye
25	Hanson, R. S.	- Nay	Monroe	- Nay

1	Murray	-	Aye	Simon	-	Nay
2	Noble	-	Nay	Skari	-	Aye
3	Nutting	-	Nay	Sparks	-	Aye
4	Payne	-	Nay	Speer	-	Nay
5	Pemberton	-	Nay	Studer	-	Aye
6	Rebal	-	Abs	Sullivan	-	Nay
7	Reichert	-	Aye	Swanberg	-	Nay
8	Robinson	-	Aye	Toole	-	Abs
9	Roeder	-	Aye	Van Buskirk	-	Aye
10	Rollins	-	Aye	Vermillion	-	Aye
11	Romney	-	Aye	Wagner	-	Aye
12	Rygg	-	Abs	Ward	-	Nay
13	Scanlin	-	Aye	Warden	-	Aye
14	Schiltz	-	Aye	Wilson	-	Nay
15	Siderius	-	Aye	Woodmansey	-	Nay

16 CLERK SMITH: Mr. Chairman, thirty-four have voted
17 Aye; forty-four have voted No.

18 CHAIRMAN GRAYBILL: Forty-four having voted No and
19 thirty-four having voted Aye, the amendment fails. We're
20 considering section twenty-seven. Members of the committee,
21 you have before you on the motion of Mrs. Sullivan, that when
22 this committee does arise and report after having had under
23 consideration section twenty-seven, that it recommend the same
24 be adopted. So many as shall be in favor of that motion, say
25 Aye.

1 DELEGATES: Aye.

2 CHAIRMAN GRAYBILL: Opposed, No.

3 (No response)

4 CHAIRMAN GRAYBILL: It's adopted. Will the clerk
5 read section twenty-eight?

6 CLERK SMITH: (Reading) Section twenty-eight, Rights
7 of the Convicted: Laws for the punishment of crime shall be
8 founded on the principles of prevention and reformation and
9 full rights shall be automatically restored upon termination
10 of state supervision for any offense against the state.
11 Section twenty-eight, Mr. Chairman.

12 CHAIRMAN GRAYBILL: Mr. James.

13 DELEGATE JAMES: Mr. Chairman, fellow delegates. I
14 move that when this committee does arise and report after
15 having had under consideration section twenty-eight of Proposal
16 Number Eight, it recommends that the same be adopted as amended.

17 CHAIRMAN GRAYBILL: Mr. James.

18 DELEGATE JAMES: Mr. Chairman. The committee voted
19 unanimously to adopt this revision of former Article Three,
20 section twenty-four. In doing so, the committee recommends
21 that once the person who has been convicted has served his
22 sentence and is no longer under state supervision, he should be
23 entitled to the restoration of all civil and political rights,
24 including the right to vote, hold office, and enter occupations
25 which require state licensing. The committee believed that this

1 is eminently proper and that the paramount concerns of prevention
2 and reformation cannot be realized unless the ex-convict can
3 readily move back into society as an equal participant in com-
4 munity affairs. Surely to rehabilitate one and attempt to in-
5 sure that he has the opportunity to become a full member of
6 the community requires that he be restored to the same rights,
7 privileges and immunities as other citizens. This provision
8 does not speak to the rights of the incarcerated while they
9 are in prison æ did Delegate Proposal Number Ninety-eight. It
10 is not meant in any way to preclude them having all rights
11 except those necessarily denied as a condition of their incar-
12 ceration. The committee has also deleted reference to capital
13 punishment. The reference to capital punishment is not neces-
14 sary, as it merely grants the legislature the power to do some-
15 thing it can do anyway. To delete this reference has no effect
16 on the status of capital punishment in Montana. It remains in
17 effect in those instances which the legislature provides.
18 The committee rejected Delegate Proposal Number Three, which
19 would have abolished capital punishment. The committee thought
20 the matter should be better left to the legislature. Now, for
21 those delegates who think that this is soft on crime or the
22 criminal and gives him more rights than he should have, may I
23 say that, at present, I believe there are twenty-four occupations
24 that are state licensed. At present, a person released from
25 prison, until he is pardoned, cannot resume his occupation.

1 He is, as you might say, in a state of limbo or still in a
2 state of isolation from society. This is, I would say, a cata-
3 lytic agent for return to criminal activity, rather than an
4 inducement to be a good member of society. So, I do believe
5 that we should adopt this section as the committee has reported
6 it. Thank you, Mr. Chairman.

7 CHAIRMAN GRAYBILL: Mr. Arbanas, you have an amend-
8 ment. Do you want the clerk to read it?

9 DELEGATE ARBANAS: Yes, please.

10 CHAIRMAN GRAYBILL: Will the clerk please read Mr.
11 Arbanas' amendment?

12 CLERK HANSON: (Reading) Mr. Chairman. I move to
13 amend section twenty-eight, page ten, line three by adding
14 after the word, state, the following: Quote, death shall not
15 be prescribed as a penalty for any crime, end quote. Signed,
16 Arbanas.

17 CHAIRMAN GRAYBILL: Mr. Arbanas has proposed an amend-
18 ment to add a sentence at the end of section twenty-eight
19 which would have the effect of abolishing the death penalty.
20 Mr. Arbanas.

21 DELEGATE ARBANAS: Mr. Chairman, fellow delegates.
22 I do not presume to second guess the committee. Yesterday, I
23 made a point of talking to Mr. Dahood and Mr. Blaylock about
24 what had transpired in the committee with regard to the death
25 penalty. Pretty much the word that I received back, was the

1 fact that there is a natural trend in this direction and that
2 the federal courts are going to decide it anyway, and that
3 California has been on the bandwagon and sooner or later, it
4 will come to Montana so to speak. So, there's really not much
5 reason for it to do it now when the legislature could do it
6 anyway. I'd like to have us very seriously consider whether
7 something is to be gained by a statement in our constitution
8 on this matter. When a motion comes on the floor in this
9 house of delegates, you all kind of listen to it and then say,
10 well, is there something to be gained by my getting up and
11 saying something about it? Sometimes we do and sometimes we
12 don't. Very often, the actual vote of this house is influenced
13 by what is said. I'd like to submit to you today that as
14 this national trend is before our nation, for us not to even
15 consider it or not to say something on it, might be a big
16 mistake. I'd like to see Montana take a lead on something
17 and if we do adopt something, it will be the vote of one more
18 state in this direction. I think that could be very important.
19 I'd like to see the issue debated by the convention and faced
20 by the convention. I find it hard to imagine that in 1972,
21 any Constitutional Convention meeting and not considering this
22 very important item. The issue before the convention, it seems
23 to me in this item, is the sacredness of life. We have debated
24 about the right to vote, and land privacy and water. We
25 come here, I think, in criminal justice, to a very important

1 item of the sacredness of life. We have on the other side of
2 the docket, murder, all sorts of terrible crimes that certainly
3 we don't want to go easy on, but we always have to measure
4 that against the sacredness of life. Perhaps we're unfortunate
5 to meet this question right before noon hour, but I would like
6 to see the convention react to the proposition. I'd like to
7 see us be one state to vote in favor of the sacredness of life.

8 CHAIRMAN GRAYBILL: Mr. Woodmansey.

9 DELEGATE WOODMANSEY: I'd like to rise in opposition
10 to the amendment by Mr. Arbanas. I think we have probably
11 seen some trends at the national level in this area, but I
12 think we're building here, a constitution for the state of
13 Montana. We've seen what California has done. I don't think
14 we have to follow what the California courts have decided.
15 Just what the courts in California decide does not necessarily
16 say what the people of California, as a whole, believe. I
17 know many people in California and I have found them to be
18 distressed with what has gone on. I know I have had people
19 talk to me regarding this during the time we have had the con-
20 vention. I feel the people I represent want something there.
21 I don't think that they feel that we're going to go out and
22 use the rope as is possible. I think many people feel that it
23 may serve a deterrent in any way. I think that if you were
24 effected by some major crime like this, that you would have
25 strong opinions this way. I'm very much against putting this

1 into the constitution and changing our present stance on this.

2 Thank you, Mr. Chairman.

3 CHAIRMAN GRAYBILL: Mr. Harbaugh.

4 DELEGATE HARBAUGH: Mr. Chairman. I rise in support
5 of the Arbanas amendment. I think that the proposal of the
6 committee, in effect, dodges the issue or maybe it really does
7 not dodge the issue either, because the committee proposal says
8 that the punishment of crime shall be founded upon the prin-
9 ciples of the prevention and reformation. Now, I fail to see
10 how the application of the death penalty, in any way, can
11 come within the scope of that particular clause and intent.
12 It seems to me that we have long since past the time when this
13 type of amendment is due in our constitution. I think the con-
14 stitution is the place to tackle this sort of issue. I don't
15 think it's the sort of thing that we ought to pass on to the
16 legislature. I believe that we have a duty to the people of
17 our state to, in effect, carry out to its conclusion the thing
18 that has been begun by the committee's proposal. They have
19 struck a very important phrase from the present article. It
20 seems to me that that indicates that we are moving one step
21 more in the direction of the abolition of the death penalty.
22 I think that the Arbanas amendment makes this clear, makes our
23 intent clear and I support the amendment.

24 CHAIRMAN GRAYBILL: Mrs. Speer.

25 DELEGATE SPEER: I rise to support Arthur Arbanas'

1 motion. I have a great respect for this Bill of Rights Com-
2 mittee, as a chairman, but I really have this strong conviction
3 and I want to speak. I feel that the death penalty is a relic
4 of the past years when there was little regard for life. I
5 would like to see this constitution representing the people of
6 Montana, commit this state to the abolition of revengeful
7 punishment for crime.

8 CHAIRMAN GRAYBILL: Mr. McCarvel.

9 DELEGATE MCCARVEL: Would Delegate Arbanas yield to
10 a question?

11 CHAIRMAN GRAYBILL: Mr. Arbanas.

12 DELEGATE ARBANAS: Certainly.

13 DELEGATE MCCARVEL: You speak of the sacredness of
14 the human life. Which one are you talking about? The man
15 that commits the crime or the man that he does away with?

16 DELEGATE ARBANAS: That's a pretty good question.
17 The sacredness of life, of course -- We know that the tremen-
18 dous crime that is committed with murder, and I think that
19 our way of handling it in the past has been an eye for an eye
20 and a tooth for a tooth sort of thing, so that you took my
21 life and the state can take your life. That's, I think, what
22 Mrs. Speer was talking about when she spoke of revengeful
23 taking of life. If this was a deterrent, if this actually re-
24 duced that type of crime, I think we'd have something to talk
25 about. I think modern investigation, modern thought in this

1 would tell us and pretty well display that what we had in mind
2 to accomplish, to protect the sacredness of the life of the
3 man being murdered, actually is not being accomplished. In
4 other words, it's almost like the man who is desperate to do
5 something. It seems that if you wanted to take a life or to
6 punish by taking a life, that would be the supreme punishment
7 for the supreme crime. In fact, it doesn't happen that way.
8 As far as the deterrent, as far as the philosophy of an eye for
9 an eye, I understand what you're saying but I don't think it
10 actually argues against the point.

11 DELEGATE MCCARVEL: Would Delegate Arbanas yield to
12 another question?

13 DELEGATE ARBANAS: Yes.

14 DELEGATE MCCARVEL: In doing away with the death
15 penalty, does that not cheapen my life? You can take my life,
16 but I can't take yours.

17 DELEGATE ARBANAS: Well, I don't know, if you were
18 dead that you could take my life. I don't believe so. It's
19 not necessarily the intent of why the opposition to the death
20 penalty. Certainly what you're saying, an eye for an eye and
21 a tooth for a tooth, that's a philosophy. It seems to me that
22 what we have to look at here is that anyone of us, at any
23 time in our life, make a certain number of mistakes and we
24 do harm to one another. We do it everyday in smaller ways or
25 in larger ways. So, after a particular incident has happened,

1 then you have -- we, as society, have -- the question of how
2 do you deal with that? You deal with it by correction. You
3 deal with it by using your information to prevent other things
4 happening. You deal with it by rehabilitation. I submit that
5 death doesn't do any of those.

6 CHAIRMAN GRAYBILL: Mr. McCarvel.

7 DELEGATE MCCARVEL: Would Delegate Arbanas yield to
8 another question?

9 CHAIRMAN GRAYBILL: Mr. Arbanas.

10 DELEGATE ARBANAS: Certainly.

11 DELEGATE MCCARVEL: What about a man that is imprison-
12 ed for life? What is to deter him from taking a guard's life
13 because he's already in there? Through some action of one of
14 the guards, he may take his life. It doesn't mean any more
15 to him.

16 DELEGATE ARBANAS: What your question probably pre-
17 sumes is the man who is so intent on evil or so twisted that
18 he's a murderer. I submit there are other ways of doing that
19 too. Our presumption is that when someone commits a crime,
20 they are a bad person rather than a person who has made a
21 mistake. Maybe that's the difference in the philosophy that
22 we're arguing back and forth in our questions, whether you
23 think a person is a bad person or a person that made a mistake.
24 I submit that adopting one of those philosophies or the other,
25 may well depend how you take care of it.

1 DELEGATE McCARVEL: I feel that there is a difference
2 between a disturbed person and one that is intent on killing.
3 I think there is a difference in between there. One would be
4 in a mental institution and one would be in a prison. That
5 is all, Mr. Chairman.

6 CHAIRMAN GRAYBILL: Mr. Murray.

7 DELEGATE MURRAY: Mr. Chairman. I move that the
8 committee recess until the hour of 1:30 o'clock P.M. this day.

9 CHAIRMAN GRAYBILL: Before we recess, the Chair
10 would like to announce that there is a Citizens' Corps luncheon
11 at noon at Jorgenson's. Mr. Blaylock, for what purpose do
12 you rise?

13 DELEGATE BLAYLOCK: To announce a committee meeting
14 of the Bill of Rights right after adjournment in the committee
15 room.

16 CHAIRMAN GRAYBILL: Mrs. Blend, for what purpose
17 do you rise?

18 DELEGATE BLEND: To announce a committee meeting of
19 the Local Government Committee in Room 437 during the lunch
20 recess. Please bring your lunch.

21 CHAIRMAN GRAYBILL: Will everyone wait until we
22 finish the business at hand? It's very disconcerting to the
23 Chair to try and adjourn this meeting when everybody is stand-
24 ing up. Will everyone please sit down? Okay.

25 Mrs. Sullivan.

1 DELEGATE SULLIVAN: Mr. President, I'm sorry but with
2 all the commotion, we didn't hear the announcement that you
3 made.

4 CHAIRMAN GRAYBILL: Right. The announcement I made
5 was that there's a noon luncheon for the Citizens' Corps
6 executive people and many people involved in the Citizens' Corps
7 know about it. I'm asked to remind you of that luncheon at
8 Jorgenson's this noon. Now, the motion is to adjourn this
9 committee until 1:30 o'clock P.M. All in favor, say Aye.

10 DELEGATES: Aye.

11 CHAIRMAN GRAYBILL: Opposed, No.

12 (No response)

13 CHAIRMAN GRAYBILL: So ordered.

14
15 (Recess 12:03 o'clock P.M.)
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1 MONTANA CONSTITUTIONAL CONVENTION

2 FORTY-FIRST DAY

3 Thursday, March 9, 1972

Convention Hall

4 1:45 o'clock, P.M.

Helena, Montana

5
6 CHAIRMAN GRAYBILL: The Committee will be in order.

7 Ladies and gentlemen, before lunch we were debating section
8 twenty-eight of the Bill of Rights article and Mr. Arbanas had
9 offered an amendment which would add a sentence to the Bill
10 of Rights article on rights of the convicted saying: Death
11 shall not be prescribed as a penalty for any drime. We had
12 not taken a vote. We will continue to debate on that issue.
13 Does anyone else care to speak?

14 Mr. Harper.

15 DELEGATE HARPER: Mr. Chairman and group, I think we
16 are to a place where we can do something for the state of
17 Montana, psychologically. I believe that most of us in our
18 private consciences would find it hard to vote if we were on
19 a jury to have a man killed or a woman killed. I think most
20 of us personally would shy away from it. I think most of the
21 people in the state of Montana would. I have been reflecting
22 on this over the lunch hour and I think what the people of
23 Montana would like to see -- they would heave a big sigh of
24 relief, in fact -- if some group like the Constitutional Con-
25 vention, or if we don't do it, some day the legislature, would

1 just all together sort of tighten their belts, stiffen up and
2 do this thing. Just remove this from the law books, and I
3 think there would be just a big sigh of relief go up from
4 people all across our state. Now, I think there are some
5 practical reasons for doing this, too. I'm a little suspect
6 of a law that's on the books that isn't operative. I suppose
7 lawyers here can tell us when the last death penalty was
8 placed in Montana --

9 UNIDENTIFIED DELEGATE: 1944.

10 DELEGATE HARPER: Forty-four? It isn't anything
11 that is presently done. I have heard people say, particularly
12 lawyers, that people on juries are a little bit reluctant to
13 bring in a first degree murder conviction because they are
14 not always sure that the judge might not impose a death pen-
15 alty, which implies to me that it really makes almost inef-
16 fective the more stringent types of punishment we would like
17 to place upon a person who has committed an offense that
18 would call for capital punishment. The other side of the
19 coin -- and it's practical, too -- is that as a result these
20 jury trials seem to drag out almost interminably and the
21 state of Montana is cost a lot of money that might otherwise
22 not have to be spent on these jury trials. If we ourselves as
23 a people on a jury would not like to see this, I sort of hate
24 to put other citizens who might be on juries in the future in
25 the place where they have to face this. I think the committee

1 has already given us a good lead because in writing this pre-
2 sent section twenty-eight they state, laws for the punishment
3 of crime should be founded on the principles of prevention
4 and reformation. So, it seems to me like this is a logical
5 amendment here because the things I have read in the last
6 twenty years or so from people who have tried to write objec-
7 tively in this field all indicate that capital punishment on
8 the law books is not really a case of preventive medicine and
9 does not do the job for prevention. I think no one can quar-
10 rel with the fact that it is a very poor way to reform a per-
11 son. The average corpse is seldom reformed by the fact that
12 he has been rendered so by some judicial decision. I think,
13 for practical purposes, as well as for maybe the bigger psy-
14 chological, philosophical principle that underlies this, that
15 the state of Montana would, in a sense, breathe a real sigh
16 of relief if we just, as their Constitutional Convention,
17 would strike forever this archaic law from our books.

18 CHAIRMAN GRAYBILL: Mr. McKeon.

19 DELEGATE MCKEON: Mr. Chairman, I rise in support
20 of the motion by Delegate Arbanas to abolish the death penalty
21 in Montana. I've done some reading during the lunch hour on
22 death penalty statistics and the philosophy of death penalty
23 in general. I note that there are fourteen states presently
24 in this country without -- presently in this country without
25 the death penalty. These states have been studied in compari-

1 son to states with their borders adjacent and the other states
2 in general and it has been found that the states without the
3 death penalty do not have a rate of capital crime any higher
4 than any of the states with the death penalty. We have heard
5 the argument that the death penalty is a deterrent to crime.
6 I feel this is the shabbiest of arguments in defense of the
7 death penalty. The death penalty is not a deterrent. We all
8 know, I am sure, that most death cases result from passion.
9 Murder is a crime of passion. It is not a reasoned crime.
10 For this reason, I submit the hanging over the head of the
11 person of a death penalty plays no part in deterring him from
12 the crime. I read of some interesting cases. There was a
13 case in one state where a police officer argued very vehemently
14 for the death penalty on the statute books of that case. Ten
15 days after his argument was adopted in that state, he murdered
16 his wife. There are other cases where a man was in prison for
17 a crime and while in prison he helped in the erection of a
18 gas chamber. He was released and immediately committed a mur-
19 der. Now this man must have been quite aware of the possibil-
20 ities of death for the crime of murder in that state, yet they
21 did not -- yet this possibility did not deter him. The exam-
22 ples are legion. The examples of this situation are legion.
23 Also in a book I read entitled, The Case Against Capital Pun-
24 ishment, the author pointed out that murderers are least likely
25 to be recidivous. Recidivous, as you know, are repeaters.

1 Parole officers from across the country were examined and they
2 testified that the paroled murderer was least -- was probably
3 the best parolee. He, more than others, realizes the error of
4 his ways and is more likely to try to redeem himself in the
5 eyes of society. Also, Mr. Chairman, I think that with four-
6 teen states having the abolition of the death penalty we have
7 a situation which is somewhat similar to a lottery. We take
8 our chances depending on the state in which we happen to com-
9 mit the crime. But I would say, and perhaps this is the
10 strongest argument which I have, that civilization is gauged
11 by the way people treat others and if we are to progress and
12 if we are to become more civilized, then, Mr. Chairman, I say
13 we must look at the way we treat others and I think one way is
14 to abolish the death penalty as inhuman and barbaric and no
15 way for a society that portends to be civilized to continue.
16 Thank you, Mr. Chairman.

17 CHAIRMAN GRAYBILL: Mr. Dahood.

18 DELEGATE DAHOOD: Mr. Chairman, on behalf of the com-
19 mittee, I think our fellow Delegates should know our position
20 with respect to this issue. I am personally opposed to the
21 death penalty. I think the evidence in favor of abolishing
22 the death penalty preponderates. I'm not going into all the
23 reasons and the statistics that exist. They could be discussed
24 here. We could conduct an intellectual debate and I'm satis-
25 fied that if we could measure it on some logical scale, those

1 that favor the abolition of the death penalty would prevail.
2 Unfortunately for that position, statistics throughout the
3 United States reflect that the people are not as convinced as
4 some of us that the death penalty should be abolished. The
5 latest survey indicated that fifty-one percent favor the death
6 penalty. We are not going to place in the Bill of Rights or
7 in this Constitution as far as our committee is concerned an
8 issue that could very well be the basis for a crusade and a
9 campaign against the entire document. Let me suggest this to
10 you, my fellow Delegates. Placing separate proposals on a bal-
11 lot has a very useful function to perform. It generates in-
12 terest in the constitutional issue. We have one issue that
13 will be on the ballot in the alternative with respect to the
14 legislature. I submit to you we need more than one. The
15 abolition of the death penalty question might very well be
16 another proposal that has sufficient merit to appear as a sep-
17 arate proposal. This is going to generate debate and discus-
18 sion throughout Montana and I am sure there will be a number
19 of citizens who will go to the polls simply because that issue
20 is presented to them in that fashion, and let them decide it.
21 After all, on an issue that statistics indicate is so close to
22 the division point of public opinion, I think we ought to leave
23 it up to the people to decide it. That is our position on the
24 Bill of Rights Committee. I think when our committee voted,
25 I think we would have voted to abolish the death penalty but

1 we are here to serve this Constitutional Convention to the
2 best of our ability, wisely and practically, and we do not
3 want to do anything that may cast aside all of the good and
4 great things that we are doing and will accomplish before this
5 Convention adjourns. Thank you, Mr. Chairman.

6 CHAIRMAN GRAYBILL: Mr. Habedank.

7 DELEGATE HABEDANK: Mr. President, I support the
8 resolution of the Bill of Rights Committee in this instance,
9 that the abolition of the death penalty should not be included
10 in this section. I also support, if there are not too many
11 other provisions going to the people, the reference of this
12 question to the people. I stated in my campaign for this of-
13 fice whenever I was asked that I personally opposed the abo-
14 lition of the death penalty and I would oppose it here, but
15 that if anything was to be done about it, I would favor its
16 referral to the people of the state of Montana to decide. If
17 they wish to decide this through an initiative measure they
18 can, without it being included in the Constitution. If, when
19 the majority of the legislature decides the death penalty
20 should be abolished, they would have that power under the pro-
21 posal. I would like to state in answer to the argument that
22 civilization is rated by the way we treat others, that the
23 fifty-one percent of the people of this country who do not
24 favor doing away with the death penalty feel that it is prob-
25 ably proper that we give some attention to the people who are

1 being murdered. It is true, probably, that a murderer is not
2 a recidivist. It is also true that the person who is murdered
3 does not repeat the performance. No one in this state is now
4 or will be, under our laws, sentenced to death except for a
5 wilful, premeditated murder. In my experience in the court
6 room and previous to that as a court reporter, I have only
7 seen one man sentenced to death. His sentence was commuted
8 by Governor Ford. That man deliberately shot a person in the
9 back. He did it wilfully, he did it intentionally, and he
10 pleaded guilty to the act. The court sentenced him to hang.
11 The fact that Governor Ford, for the sake of his family, saw
12 fit to commute that sentence, in my opinion is no reason for
13 the law to be changed. Whether or not the death penalty is a
14 deterrent, I feel anyone who commits a crime of premeditated,
15 wilful murder should know that the possible sentence for that
16 penalty is death. Bobby Kennedy did nothing to Sirhan. When
17 he killed him, he killed him deliberately and intentionally,
18 and I know of no reason why he should be reformed to go out
19 and possibly kill again or to do some other act, if the jury
20 found he met the qualifications of the law in California.
21 When a person is convicted of deliberately murdering and raping
22 an innocent girl and he meets the qualifications of the law,
23 I see personally no justification, either in religion or mor-
24 als, for the rehabilitation of that person. I read in the
25 book on the case against the death penalty where it had a bad

1 psychological effect on the convicted person. Yes, if he is
2 convicted the effect is psychologically bad. I could and
3 would vote for the execution of a person who met the require-
4 ments of the law as a premeditated murderer. I think there
5 are many other people in the state of Montana who would do
6 this, and I do not think that the law should be changed until
7 it is changed by the legislature or the people of Montana.
8 Thank you, Mr. President.

9 CHAIRMAN GRAYBILL: Mr. Melvin.

10 DELEGATE MELVIN: Mr. Chairman, I must rise in sup-
11 port of the position of the committee on section twenty-eight.
12 Everybody in this room believes in capital punishment or else
13 you don't believe in the system. You have put stars and
14 badges on officers and handed them guns and many times those
15 officers are called upon in second's time to decide whether
16 or not they believe in capital punishment. Now, I think that
17 this is the issue. In a matter of seconds those officers have
18 to decide. Some of these cases of murder -- and we're not
19 talking about mistakes, we are talking about first degree mur-
20 der which requires the element of premeditation, planning, a
21 decision to commit murder before the murder is committed, or
22 else a case of a person participating in a felony and commit-
23 ting murder at that particular time. Now, I am sure I can
24 speak for a good many law enforcement officers in Montana when
25 I tell you that they would feel very much more confident if

1 they felt there was a little back-up, and after all, aren't
2 we kind of jousting with windmills? -- 1944 was the last cap-
3 ital punishment in Montana. Now, in the past week or ten days
4 there was an article in the papers from the Associated Press
5 from the Montana Criminal Law Commission and they are recom-
6 mending that the death penalty be used if the court finds that,
7 one, the deliberate homicide was committed by a convict sen-
8 tenced to imprisonment for more than thirty years; number two,
9 the defendant was previously convicted of another deliberate
10 homicide; number three, the deliberate homicide was committed
11 for pecuniary gain; number four, the deliberate homicide was
12 especially heinous, atrocious or cruel, manifesting exceptional
13 depravity. Is that too much to ask? And as far as a deterrent
14 is concerned, I think that this is a question that will be
15 argued from now until there is no longer a world. We have
16 talked about a state to the east of us and that particular
17 state has life imprisonment for murder. By a man's own admis-
18 sion, he realized that he was in Montana when his wife inform-
19 ed him that she was not interested in a reconciliation, and he
20 realized that Montana still used the rope, so, by his own
21 statement, he drove back to that fair state before he committed
22 the deed and he received life imprisonment. Thank you, Mr.
23 Chairman.

24 CHAIRMAN GRAYBILL: Mr. Romney.

25 DELEGATE ROMNEY: Mr. Chairman, I call your attention

1 to the fact that West Virginia formerly had ceased to use cap-
2 ital punishment but in the past month they reverted to capital
3 punishment. I call to your attention the deed that this man
4 Mason and his three girl friends who recently -- I forgot the
5 name. Anyway you know who I mean -- down in California. He
6 and his three women accomplices killed several people and have
7 been sentenced to death and now are apparently reprieved by
8 action of California -- the court doing away with the death
9 sentence there. I don't know whether capital punishment is a
10 deterrent or not, but how many of you have ever seen a legal
11 execution? I have. I've seen two of them. In 1921 or '22
12 the state of Montana executed a man by the name of Vulkovich
13 in Missoula. Sheriff Houston was in charge of the execution.
14 The county erected a huge pine board fence around one corner
15 of the court house. Imposing invitations were printed and
16 mailed to many people. I was a young newspaper reporter at
17 the time and I attended to view the proceedings to write the
18 story for my paper. It was during the period of the noble
19 experiment of prohibition, but most everybody there was drunk
20 on moonshine. They led the condemned man out and during the
21 proceedings they dropped him three times and he strangled
22 rather than having his neck broken. It's pretty grisly bus-
23 iness, folks. Makes me sick to think about it. There were
24 people who vomited. Some of them were nearly ready to faint,
25 and I felt pretty much that way myself although I was a pretty

1 flip young buck in those days. About a year later, in early
2 '24, while I was steamshipping in the Orient in what is now
3 Viet Nam, I witnessed another execution. The condemned man
4 was -- they kneeled him down before a block and with one stroke
5 of a huge knife the executioner whacked his head off and the
6 blood spurted up like that. I tell you, I'm not going to vote
7 for capital punishment.

8 CHAIRMAN GRAYBILL: Mr. Martin.

9 DELEGATE MARTIN: (Inaudible. Microphone not turned
10 on.)

11 CHAIRMAN GRAYBILL: Restate that, Mr. Martin.

12 DELEGATE MARTIN: I'm wondering if Delegate Dahood
13 would yield to a question?

14 CHAIRMAN GRAYBILL: Mr. Dahood?

15 DELEGATE DAHOOD: I would, Mr. Chairman.

16 DELEGATE MARTIN: Is it a fact that presently we
17 have capital punishment by statute?

18 DELEGATE DAHOOD: That is correct.

19 DELEGATE MARTIN: Is there any need to put it in
20 the Constitution?

21 DELEGATE DAHOOD: There is no need in my opinion.

22 DELEGATE MARTIN: Thank you.

23 CHAIRMAN GRAYBILL: Mr. Johnson.

24 DELEGATE JOHNSON: Mr. Chairman, I rise in opposi-
25 tion to the statement which would remove capital punishment

1 from our statutes. There are only two or three reasons why I
2 think a person should be executed. One of them certainly is
3 when, just for instance, a man who would rape a little girl,
4 two or three before they catch him, and murder each one as he
5 goes along, and for all intents and purposes otherwise, the
6 psychiatrists say he's perfectly sane. You can't find a thing
7 -- of course these psychiatrists build themselves up and say
8 they're great, they've really learned, they've got the new
9 medical dictionary memorized and they can treat these people
10 so they're completely cured. They turn them loose and in two,
11 three days you have another little girl or two or three, raped
12 and murdered, dismembered, whatever. This is vicious. This
13 type of killer, when you turn him loose, this is what happens
14 all the time. For some reason or another somebody gets them
15 turned loose and they go out and kill somebody else. What
16 kind of responsibility is it if you're going to let these
17 people out again to do this? We should have that in the back-
18 ground. I don't believe in hanging everybody --

19 (Laughter)

20 DELEGATE JOHNSON: However, there is another cate-
21 gory where I certainly would like to see capital punishment
22 used once in a while and that's for these drug wholesalers and
23 pushers. This is the most fiendish operation. They ruin more
24 lives than any number of murderers. Now, that's about all I
25 have to say except maybe you could add cattle rustlers in there.

1 (Laughter)

2 CHAIRMAN GRAYBILL: Mr. Studer.

3 DELEGATE STUDER: Mr. President, I maintain that the
4 death penalty is a deterrent. I just bring it up because I
5 happened to read about the Mafia and these gangsters and what
6 they do every once in a while, putting these fellows in a sack
7 of concrete and throwing them off a bridge in the river or
8 taking them out and shooting them now and then. If they're
9 not using this as a deterrent, I don't know what they're using
10 it for. It certainly does stop a lot of going off on direc-
11 tions that the chiefs don't want them to go, and that isn't
12 even murder. They just keep them in line with a death penalty.
13 I'm sure it is a deterrent. How can people quote figures when
14 they don't know how many people haven't been murdered or raped
15 because of the fact that there was a death penalty but they
16 didn't use it or something like that. There's no question --
17 I mean, you can't guess as to how many people might have been
18 killed or might not have been killed. The facts were this
19 morning on television -- it just happened to be on CBS or NBS
20 -- I remember seeing a fellow talking about this same thing,
21 the death penalty, and he quoted the figures that during the
22 time forty-two people were reprieved, there were five thousand
23 more violent crimes in that period than in previous periods of
24 the same length of time. This fellow was evidently for keeping
25 on the death penalty and he had a pretty good argument. I

1 don't see what harm it does to leave it in there and it may do
2 some good, and if we do go on this alternate thing of Dahood's
3 -- Mr. Dahood, I believe the alternate ballot might be the
4 answer to it.

5 CHAIRMAN GRAYBILL: Mrs. Erdmann.

6 DELEGATE ERDMANN: Mr. Chairman, I support the stand
7 of the majority report. I'm sorry I didn't know about Miles
8 Romney's little stories or I would probably have spent last
9 night looking up the story of the Vigilantes and entertain and
10 shock you with the stories of the hanging of Henry Plummer and
11 his road agents. However, I don't pretend to understand how
12 men think, but I thought it might be interesting to you to
13 know what the results of a Good Housekeeping poll have been in
14 regard to capital punishment. About ten years ago they polled
15 their lady readers, and this represents middle class women
16 across America, and at that time the enlightened reading woman
17 of the Good Housekeeping class were about ninety percent against
18 the death penalty. But last fall, late last fall and the re-
19 ports of their poll were published shortly before Christmas,
20 they polled their lady readers again, and perhaps it was be-
21 cause of the assassination or it may have been, they also men-
22 tioned, it may have been the result of this increased danger
23 from the airline hijackers, but at any rate the women had
24 changed their mind. Sixty-some percent were in favor of the
25 death penalty with thirty percent, in rough numbers, being

1 against it and about ten percent not responding. Thank you,
2 Mr. President.

3 CHAIRMAN GRAYBILL: Mr. Kamhoot.

4 DELEGATE KAMHOOT: Mr. Chairman, I think I would
5 like to just address my remarks to Delegate Romney. He very
6 emotionally and gruesomely described what he had seen. I'm
7 sure that if he had been on the river bank over near Gardiner
8 two years ago, he would have seen a sight that probably would
9 have made him sick, completely, when this fellow chopped an-
10 other one up and ate part of him and I'm sure the blood squirt-
11 ed pretty high there, too. I think Delegate Romney is well
12 aware of the Lindbergh law. I can remember when the Lindbergh
13 law was enacted and it certainly did slow up the kidnapping
14 of these children and the reason it did was because of the
15 death penalty for people that did these kinds of crimes. Now,
16 I don't know how many people should be hanged or how many
17 shouldn't, but I do feel that as long as Montana retains this
18 right to put people to death for some of these crimes, that
19 we may keep some of this crud out of Montana, and I certainly
20 would be for that, and I will not support the amendment of
21 Delegate Arbanas. Thank you, Mr. Chairman.

22 CHAIRMAN GRAYBILL: Mrs. Mansfield.

23 DELEGATE MANSFIELD: Mr. Chairman, I would just like
24 to comment along with these other members that in this time
25 and especially after last night, the hijacking of airplanes.

1 I think we will have to pass something like this, too, along
2 with the Lindbergh law to curtail this. Thank you.

3 CHAIRMAN GRAYBILL: Mrs. Eck.

4 DELEGATE ECK: Mr. Chairman, I rise in defense of
5 our committee's position, and I do so somewhat reluctantly and
6 I think along with a good share of the members on our commit-
7 tee, I very much oppose a death penalty. But, I think that
8 the kind of arguments that we've had on the floor today indi-
9 cate the kind of arguments we would get around the state dur-
10 ing the campaign time. Now, we have a lot of fairly difficult
11 issues to present to the public. We want them to be aware of
12 the changes we are making in the structure of state government.
13 We want them to be aware of the kind of government we are
14 going to try to bring to the people of Montana, and I see this
15 as an issue that could just cloud over everything else and
16 really steal our thunder and in many ways prevent the people
17 of Montana from facing up to the much more relevant issues
18 that are facing us. I agree that the death penalty is not
19 really appropriate, it is not really being used, the action we
20 take is probably not going to make any difference on whether
21 a person is ever executed in Montana. I think it's quite pos-
22 sible the supreme court might take action on this and make
23 any action on the state level unnecessary. But, if we do feel
24 that removing the death penalty is necessary and it should be
25 written into the Constitution, I think it would be much wiser

1 to take it as a separate issue in some other year when we don't
2 have an issue of this magnitude and this complication facing
3 the people of Montana. And I urge you to stay with the major-
4 ity report for this reason. I think this is a very difficult
5 decision. I think a lot of us are going to be very reluctant
6 to push a red button on this issue because we really do be-
7 lieve in abolishing the death penalty, but on the other hand,
8 I think it's an appropriate thing to do. I think that it
9 could cause the whole understanding of the constitutional
10 issues a great deal of damage. Thank you.

11 CHAIRMAN GRAYBILL: Mr. Harbaugh.

12 DELEGATE HARBAUGH: Mr. Chairman, I'd like to take
13 issue with Mrs. Eck and what she said because the committee
14 chairman has, in fact, said he favors the abolition of the
15 death penalty. And if it is true, as someone has stated here,
16 that a majority of the public are very much opposed to doing
17 away with this provision in our present Constitution, then I
18 think we are already in trouble because this is what the ma-
19 jority proposal does. It removes from constitutional status
20 the death penalty and it leaves it up to the legislature even-
21 tually to abolish it. Now, if the people of the state are so
22 very much in favor of retaining it, then I suggest that we
23 have already broached the issue and that if the people are
24 this concerned they will then, in fact, vote against the Con-
25 stitution if they are going to vote against it for that reason.

1 So, it seems to me that it would do no good, in the light of
2 the proposal that the committee has brought forth, to put this
3 on the ballot in an alternate form. I think that this is the
4 time and this is the place to decide the issue and, again, I
5 would support Mr. Arbanas' amendment.

6 CHAIRMAN GRAYBILL: Mr. Wilson.

7 DELEGATE WILSON: Mr. President, I rise in opposition
8 to Mr. Arbanas' amendment, and I would like to pose this ques-
9 tion to you fellow Delegates. I wonder how many lives have
10 been saved by the very fact that we do have this penalty hang-
11 ing in front of people. Just ask yourselves, now, wouldn't
12 you think just a little bit about maybe they might stretch your
13 neck if you killed someone? I wonder how many other people has
14 thought about this? I wonder how many lives have been saved
15 just with this thought? And I suggest to you that we have a
16 terrific problem with law enforcement at the present time.
17 Every law enforcement officer who is on duty never knows when
18 he's going to be subjected to a bullet, and if you remove this
19 little bit of fear that most law-abiding citizens have, what
20 does a life sentence mean in Montana? The maximum is about
21 thirteen years. I've known several that got out and in far
22 less time than that -- five or six or eight or nine -- for
23 murder. But there, again, I say--you don't know how many lives
24 you have saved with this, with the very threat that this poses
25 to the person and checks him just in time before he commits

1 this crime. I think that this is something that we really
2 need to think about. How many lives will we save -- not how
3 many people we are going to execute. Thank you, Mr. President.

4 CHAIRMAN GRAYBILL: Mr. Choate.

5 DELEGATE CHOATE: Mr. Chairman, would Delegate Har-
6 baugh yield to a question?

7 CHAIRMAN GRAYBILL: Mr. Harbaugh?

8 DELEGATE HARBAUGH: I yield.

9 DELEGATE CHOATE: Yes, Mr. Harbaugh. Where in the
10 present Constitution do you find a provision that provides
11 for capital punishment?

12 DELEGATE HARBAUGH: Well, the provision is in the
13 parallel article, section twenty-four. Section twenty-four
14 says: Laws for the punishment of crimes shall be founded on
15 the principles of reformation and preservation -- prevention,
16 but this shall not affect the power of the legislative assem-
17 bly to provide for punishing offenses by death. And that's
18 removed from the committee's language.

19 DELEGATE CHOATE: O.K., thank you.

20 CHAIRMAN GRAYBILL: Mr. Davis.

21 DELEGATE DAVIS: Mr. President, fellow Delegates,
22 I am a person who has given a lot of thought to the death pen-
23 alty over the years, and it's been in relation to making the
24 decision of whether to ask for the death penalty or not when
25 prosecuting murder cases. I have never had a case where I

1 have asked for the death penalty. In the last five murder
2 cases I tried, there were never a case where I could ask for
3 the death penalty, but I think it's important for you to know
4 that in the state of Montana, at the outset of the trial, you
5 can make a determination as to whether you are going to ask
6 for the death penalty or not, and that's binding and the judge
7 cannot and will not give the death penalty if you ask for it.
8 So, it's not an automatic, speculative thing. In a trial, it
9 is a thing that requires a lot of soul-searching and you think
10 one way one time in your life, and I suppose you think another
11 way when there's a real heinous crime committed. I recall --
12 it's not a type of thing where you are going to get a jury or
13 a judge to very easily give a death penalty. In other words,
14 when someone made the statement here, let's be strong and get
15 rid of it--I would submit it's going to take someone an awful
16 lot stronger that's going to be able to give the death penalty
17 if they think it's an appropriate case for it. It wasn't too
18 long ago I asked the judge from another jurisdiction what had
19 happened where a boy had shot his father and mother and they
20 turned him loose. And the judge said, well, they felt sorry
21 for him because he's an orphan.

22 (Laughter)

23 DELEGATE DAVIS: And that's usually what happens
24 on these type of cases. I mean, there's no rights in here
25 for the victims of these crimes. I've been in the investiga-

1 tion where the widows and the orphans are completely forgot
2 about and all the rights are the other way. Everybody starts
3 immediately thinking about the rights of the defendant. And
4 then, there's another thing I really think is kind of inter-
5 esting in this thing. When you gave the right in your Consti-
6 tution for anyone to give -- use sufficient force to enforce--
7 to protect his own life and his own property, you, in a sense,
8 said you can shoot somebody in self-defense and that's a death
9 penalty in reverse. In other words, you wouldn't want to take
10 that right away to protect your wife and your children and
11 your property. I think we are creating a great deal of alarm
12 over a situation that's not bound to happen. The matter is
13 before the supreme court of the United States right now. It
14 would seem to me this body, in its good judgment, would leave
15 our Constitution in its present form, and it's a legislative
16 matter in its present form, or defer the matter to a vote of
17 the people -- in other words, and see if we want to superim-
18 pose our personal, individual judgments on those other people
19 who are quite concerned. And, I think the death penalty would
20 be more important to put on the ballot than whether we can
21 have lotteries or a lot of other things that are going to come
22 up as great big challenges of dealing with rights and so forth.
23 This might be the kind of thing that everybody's voice should
24 be heard in it. So, I would support, in the best interests of
25 this document that we are trying to write, leaving this matter

1 in its present form and defeating the amendment and leaving
2 the matter to the legislature or putting it as a separate is-
3 sue on the ballot.

4 CHAIRMAN GRAYBILL: Mr. Kelleher.

5 DELEGATE KELLEHER: Mr. Chairman, I have two prin-
6 ciple objections to the death penalty. The first one is that
7 the hangman's noose is a white man's weapon, not only here but
8 in the South, and I believe the last man to be hung in this
9 state was a black man, and there are very few black men in
10 this state. I have referred to that very well-read document,
11 Report Number Ten, of Rick Applegate's of the Bill of Rights,
12 which I'm sure all of you have read thoroughly. On page one
13 eighty-five he states: Race is a clear factor in the applica-
14 tion of the death penalty. For example, between 1932 and 1957,
15 twice as many blacks as whites were executed in the South. To
16 be sure, crime rates for blacks and whites are different but
17 not to the extent reflected by capital punishment statistics.
18 Especially in cases of rape, the discriminatory application
19 is clear. From 1930 to 1962, four hundred and forty-six people
20 were executed for rape. Forty-five were white, two were Indian
21 and three hundred and ninety-nine were black. A total of four
22 hundred and thirty-six of these executions were in the South.
23 Forty-two were white, two were Indian, and three hundred and
24 ninety-two were black. Just over two pages previous to that,
25 in the well-read document of Mr. Applegate, on page one eighty-

1 three, he set forth ten states--the records in ten states--for
2 the period 1964 through '68. He matched up these ten states,
3 like Rhode Island and Connecticut, with Wisconsin and Indiana
4 --those that had the capital punishment and those that did not
5 --and the statistics very, very clearly indicate that capital
6 punishment is not a deterrent to capital crimes. They used to
7 say the Germans had two hundred words for making war and the
8 French had two hundred words for making love and the British
9 had two hundred reasons for hanging you. In 1801, the British
10 hung a ten year old -- a thirteen year old boy for stealing a
11 spoon. The British, several years ago, after World War II, as
12 you will recall--the men of my generation--abolished capital
13 punishment and although we have capital punishment in almost
14 all our states, including the great state of Texas, our pres-
15 ident, Jack Kennedy, although we had a batallion of SS men --
16 secret service men -- to help protect him, was assassinated.
17 Bobby Kennedy was assassinated, although California had the
18 death penalty. Great Britain does not have the death penalty.
19 The prime minister of Great Britain has one bodyguard. The
20 British bobbies do not carry guns and yet their death rate --
21 the number of capital crimes, rather -- has decreased since
22 they got rid of the death penalty. Only the Soviet Union, in
23 the modern countries, and Spain and one other European country
24 --I believe it's the French with their guillotines--still have
25 capital punishment. The rest of the civilized -- so-called

1 civilized world has done away with it. I support Mr. Arbanas'
2 amendment.

3 CHAIRMAN GRAYBILL: Mr. Arness.

4 DELEGATE ARNESS: Mr. Chairman, I have a question
5 as to a point of order, I think. I notice on our desks we
6 have a proposed amendment that would deal with two other as-
7 pects of the same question and apparently, regardless how we
8 go on this, we will have to discuss that later. I wonder
9 whether it's the intention of the proposer of this now to
10 withdraw it or are we going to have to discuss this again at
11 a later time?

12 CHAIRMAN GRAYBILL: No, Mr. Arness. Oftentimes
13 people have things that they want people to understand and
14 they put them out on the desks. Nothing happens until it
15 comes through the Chair, and I think we should not discuss or
16 debate things that get on your desks until they are brought
17 up. You may read them so you understand them, but if you
18 start discussing them or debating them before they are brought
19 to the Chair or put on the floor, you are oftentimes debating
20 something that need not be debated. I don't know whether they
21 are going to be brought up or not. I let any of you bring up
22 anything as you please and I suppose it depends. I think the
23 practice of letting people put things on the desks ahead of
24 time is a good one because it lets people understand and gives
25 them a little chance to read them, but this came up the other

1 day and I think we should not place too much significance on
2 things put on the desks, except to read them, until they come
3 before the body. Is there further discussion on Mr. Arbanas'
4 proposal?

5 Mr. Artz.

6 DELEGATE ARTZ: Mr. Chairman, I have been patiently
7 waiting for somebody to bring up this point, and I ask you to
8 consider which is more important -- this proposed Constitution
9 or the life of an innocent person. Courts have made mistakes.
10 Innocent people have been convicted. An innocent person has,
11 after he has been executed -- it becomes rather impossible to
12 correct the mistake. I ask you how many have read the book,
13 Convicting the Innocent, and I would also like to ask you to
14 consider one little sentence that goes about quite commonly
15 that only the poor are hung, not the rich. Thank you.

16 CHAIRMAN GRAYBILL: Mr. Delaney.

17 DELEGATE DELANEY: Would Mr. Dahood yield to a ques-
18 tion?

19 CHAIRMAN GRAYBILL: Mr. Dahood?

20 DELEGATE DAHOOD: I yield, Mr. Chairman.

21 DELEGATE DELANEY: It would appear to me by these
22 words, prevention and reformation, that you have already re-
23 moved the death penalty in your article without this addition-
24 al words.

25 DELEGATE DAHOOD: Delegate Delaney, we have not done

1 that. Contrary to a misconception that seems to be prevalent,
2 our present Constitution does not provide for the death pen-
3 alty as a form of punishment. It merely states that the legis-
4 lature may enact legislation providing for the death penalty
5 in a given case. That language, in our opinion, doesn't serve
6 any real purpose in the Bill of Rights. We have merely re-
7 moved the language which results in changing absolutely no-
8 thing. The legislature still has the power to abolish the
9 death penalty, or the legislature has the power to extend the
10 death penalty, and I commend to you Delegate Eck's comments
11 that perhaps we are dealing with an issue that for this moment
12 and for this time does not have that kind of importance be-
13 cause of all the factors that have been discussed here, and
14 there are more important issues for the electorate of Montana.
15 Thank you, Mr. Chairman.

16 CHAIRMAN GRAYBILL: Mr. Harper.

17 DELEGATE HARPER: Mr. Chairman, what Mrs. Eck and
18 what Mr. Dahood said may be true, but unless Mr. Arbanas is
19 going to arise to withdraw his amendment, I am going to have
20 to one of three things. I'm going to have to vote yes. I go
21 for abolishing the death penalty. I'm going to have to vote
22 no. I favor keeping it. Or, I'm going to have to sit here
23 and not punch a button and let somebody else make my decision.
24 Now, I'm going to make a decision and it's going to be on a
25 very simple basis. I think that the death penalty is wrong.

1 Now, that may sound very naive and very idealistic and it may
2 sound just like what you'd expect a minister to say because I
3 do actually say that kind of thing Sunday after Sunday. Now,
4 this is Thursday and my congregation is not here, and I'm not
5 behind the pulpit, but I'm sitting here where we're all sit-
6 ting, behind these two buttons. Now, if everybody in this
7 room is for capital punishment, I'll just make my stand. I
8 think it's wrong. If everybody in the state of Montana is for
9 capital punishment, I still think it's wrong. I have voted
10 that way on several issues. I believe in the right to free
11 voting, so I voted that way. I would vote that way if some-
12 body came in here and said everybody in Montana is for re-
13 stricting the ballot. I would still vote that way. I voted
14 for due process of law. I think no person should be denied
15 it. If a whole group of people came in here and said this
16 is going to make the Constitution in precarious balance, I
17 would still vote for due process of law. I would vote against
18 double jeopardy. I have voted for several issues in the Bill
19 of Rights on the question of right or wrong and they have been
20 my personal decisions and I'll vote that way on this one, too.
21 I do not think capital punishment is in accord with my prin-
22 ciples and so I shall vote against it.

23 CHAIRMAN GRAYBILL: Mr. Foster.

24 DELEGATE FOSTER: Mr. Chairman --

25 (A dog entered the hall and started barking.)

1 DELEGATE FOSTER: --fellow Delegates. I don't expect
2 to contend with that type of competition, but I would like to
3 respond in some part to Delegate Artz's comment, and also, I
4 think, to a degree to Delegate Harper's comments. Since the
5 time that I was in junior high school and studying the question
6 of capital punishment, through high school and through college
7 and to the present time, I have always been opposed to it in
8 principle. I am opposed to it on a very basic ground that for
9 the state to take a life is really not the proper way to con-
10 duct the government of the people. And if we here assembled
11 were up against the question once and for all, with no further
12 chance to determine the question, I would vote in favor of re-
13 moving the death penalty. But, in fact, we are not in that
14 position. There will be other chances to remove this partic-
15 ular practice. The supreme court of the United States of
16 America could remove it tomorrow. The legislature assembled
17 here one year from now could remove it one year from now. And
18 assuming that the Constitution passes, the people of Montana
19 by initiative could remove this at any time that they pleased
20 in the future by referendum. And I feel that this issue is
21 such that people who are opposed to removing the death pen-
22 alty, opposed to putting in the Constitution that the state
23 of Montana under no circumstances shall ever use capital pun-
24 ishment, are not going to reason this question out. And this
25 is the type of a question that people, from the very depths

1 of their intestinal fortitude, if you will, will vote and I
2 feel the Constitution will be in very grave danger if it gave
3 these type of people no option whatsoever. I support the com-
4 mittee position completely and I feel that we should not lock
5 the door to people of the state of Montana that feel so strong-
6 ly about this issue that they are not willing to consider any
7 of the other merits of the Constitution. If a movement is
8 made to put the question to a side issue on the ballot, I
9 would also support that, but at this point I oppose the amend-
10 ment of Harold Arbanas and support the majority position of
11 the Bill of Rights Committee. Thank you for your attention.
12 Thank you, Mr. Chairman.

13 CHAIRMAN GRAYBILL: Mr. Arbanas.

14 DELEGATE ARBANAS: Mr. Chairman and fellow Delegates,
15 I would like to close and I appreciate the many fine thinking
16 and concerned over this issue. I tried to make some notes
17 during the various talks and I hoped that I could kind of go
18 back and at least react from my point of view on what was said.
19 I mentioned that a vote in favor of this amendment would be a
20 vote of this state for a national movement. Delegate Wood-
21 mansey seemed to think I was implying that we had to do what
22 California did. I wouldn't suggest that. I think we have to
23 not wait for others to do it. I think we have the possibility
24 of doing something and taking a lead. All through the debate
25 the one thing that kind of kept coming back to me, of course,

1 was the fact that this first murderer that we talk about, and
2 I suppose in a case of murder this first murderer was wrong.
3 I don't know how that suddenly sets up that another murderer
4 is right. I must confess that George Harper and I would be
5 right on the same wave length. I just cannot see that there
6 is a right thing here. There is a presumption in our talks
7 that the state can do that thing that suddenly, because the
8 state does it, it's right. I think there's a great deal to be
9 said on our individual philosophy of whether you look on any
10 crime as a thing that makes a person bad or whether you em-
11 phasize in your mind the possibility of rehabilitation. One
12 of the books I was reading had a sentence which impressed me
13 very much -- the civilized goal of criminal justice is rehab-
14 ilitation. I suggest that we live in a civilized time. There's
15 possibly many cop-outs that all of us can take during the forum
16 of this Convention. One of the cop-outs, of course, is to
17 throw in, as determined by the legislature, and sometimes that's
18 good and sometimes it's bad. But maybe even a more severe cop-
19 out would be, let's refer it to the people. I react very
20 strongly about the idea that kept coming up over and over
21 again--they could do it. What I'm trying to tell you today is
22 we can do it and we have to face it that way. There was some
23 talk -- Delegate Habedank, when you talked about the fact of
24 such-and-such a case, there was no reason to reform this man
25 and that religion wouldn't save him, I would have to say from

1 the point of view of religion that I have always been taught
2 that somehow or another it's never too late and that's the
3 kind of religion I kind of stick with. The business of a law
4 officer -- I think that's a real different case than a cool,
5 calculating murderer of a criminal, or if you want to put it,
6 execution. I suggest that that cool, calculating execution
7 is not too much different than the cool, calculating execution
8 we started with, and the fact that we do give guns to law en-
9 forcement officers is quite a different matter. There was a
10 suggestion, too -- and I think this is very important for you
11 to think about -- that between execution and letting a man out
12 in fifteen years we had no middle ground, that there was a
13 suggestion that we let people out now in the short time so
14 they can go out and repeat the crime. Maybe that's where the
15 reform has to take place. We don't have to jump from, let's
16 say, a poor detention system, the men you reform, to capital
17 punishment as a excuse for that. After hearing Delegate Rom-
18 ney's description of the execution, I found it difficult to
19 agree with Marian Erdmann that somehow hanging was good house-
20 keeping --

21 (Laughter)

22 DELEGATE ARBANAS: I have to disagree, too, with
23 Delegate Eck on the matter that we should avoid the problem
24 because it's a tough one. We are working for reform of gov-
25 ernment in Montana and that's the kind of government we want

1 to set, she said, before the people. And that's the real
2 point. Are we going to avoid that kind of issue? Finally, I
3 suppose I began the argument on the sacredness of life. I
4 would just hope that if the day ever came when I was on the
5 docket and accused of a crime I never committed, that there
6 would be people around that believed in the sacredness of
7 life, the fact that I could be rehabilitated. I don't believe
8 we can keep saying they could do it. I think we have to say
9 we can do it. I don't think we have to keep saying that the
10 people of Montana will vote their emotions and then vote our
11 emotions. Somehow or another, somebody has to deal with this
12 in a reasonable fashion. Thank you.

13 CHAIRMAN GRAYBILL: Very well, the issue is on Mr.
14 Arbanas' motion --

15 UNIDENTIFIED DELEGATE: Roll call.

16 CHAIRMAN GRAYBILL: Yes, we'll have a roll call.
17 -- to add to the end of section twenty-eight the language:
18 Death shall not be prescribed as a penalty for any crime. So
19 many as shall be in favor of Mr. Arbanas' motion, vote Aye.
20 So many as shall be opposed, vote No. Has every Delegate voted?

21 (No response)

22 CHAIRMAN GRAYBILL: Does any Delegate wish to change
23 his vote?

24 (No response)

25 CHAIRMAN GRAYBILL: Very well, take the vote, Mr.

1	Clerk.					
2	Aasheim	-	Absent	Champoux	-	Aye
3	Anderson, J.	-	Nay	Choate	-	Nay
4	Anderson, O.	-	Nay	Conover	-	Nay
5	Arbanas	-	Aye	Cross	-	Aye
6	Arness	-	Nay	Dahood	-	Nay
7	Aronow	-	Nay	Davis	-	Nay
8	Artz	-	Aye	Delaney	-	Nay
9	Ask	-	Nay	Driscoll	-	Aye
10	Babcock	-	Nay	Drum	-	Nay
11	Barnard	-	Aye	Eck	-	Nay
12	Bates	-	Excused	Erdmann	-	Nay
13	Belcher	-	Nay	Eskildsen	-	Nay
14	Berg	-	Aye	Etchart	-	Nay
15	Berthelson	-	Nay	Felt	-	Absent
16	Blaylock	-	Aye	Foster	-	Nay
17	Blend	-	Absent	Furlong	-	Excused
18	Bowman	-	Nay	Garlington	-	Nay
19	Brazier	-	Absent	Gysler	-	Nay
20	Brown	-	Nay	Habedank	-	Nay
21	Bugbee	-	Aye	Hanson, R. S.	-	Nay
22	Burkhardt	-	Aye	Hanson, R.	-	Aye
23	Cain	-	Aye	Harbaugh	-	Aye
24	Campbell	-	Aye	Harlow	-	Aye
25	Cate	-	Aye	Harper	-	Aye

1	Harrington	-	Aye	Pemberton	-	Nay
2	Heliker	-	Aye	Rebal	-	Nay
3	Holland	-	Aye	Reichert	-	Absent
4	Jacobsen	-	Nay	Robinson	-	Aye
5	James	-	Nay	Roeder	-	Absent
6	Johnson	-	Nay	Rollins	-	Aye
7	Joyce	-	Absent	Romney	-	Aye
8	Kamhoot	-	Nay	Rygg	-	Aye
9	Kelleher	-	Aye	Scanlin	-	Aye
10	Leuthold	-	Aye	Schiltz	-	Aye
11	Loendorf	-	Aye	Siderius	-	Aye
12	Lorello	-	Aye	Simon	-	Aye
13	Mahoney	-	Nay	Skari	-	Aye
14	Mansfield	-	Nay	Sparks	-	Nay
15	Martin	-	Nay	Speer	-	Aye
16	McCarvel	-	Nay	Studer	-	Nay
17	McDonough	-	Aye	Sullivan	-	Nay
18	McKeon	-	Aye	Swanberg	-	Aye
19	McNeil	-	Nay	Toole	-	Nay
20	Melvin	-	Nay	Van Buskirk	-	Aye
21	Monroe	-	Aye	Vermillion	-	Aye
22	Murray	-	Nay	Wagner	-	Nay
23	Noble	-	Nay	Ward	-	Nay
24	Nutting	-	Absent	Warden	-	Nay
25	Payne	-	Aye	Wilson	-	Nay

1 Woodmansey - Nay Mr. Chairman - Aye

2 CLERK HANSON: Mr. Chairman, forty-two Delegates
3 voting Aye, forty-eight voting No.

4 CHAIRMAN GRAYBILL: Forty-two Delegates having voted
5 Aye and forty-eight having voted No, Mr. Arbanas' motion does
6 not prevail and we still are discussing section twenty-eight.

7 Mr. Campbell.

8 DELEGATE CAMPBELL: Mr. Chairman, I would request
9 that the Clerk read my amendment which has been presented.

10 CHAIRMAN GRAYBILL: Mr. Campbell has an amendment.
11 Would you read it? Mr. Clerk?

12 CLERK HANSON: (Reading) Mr. Chairman, I move to
13 place as a side issue on the ballot the following: Death
14 shall not be prescribed as a penalty for any crime against
15 the state. Signed, Campbell.

16 CHAIRMAN GRAYBILL: Very well, the issue is on Mr.
17 Campbell's amendment which is to place this matter as a side
18 issue on the ballot: Death shall not be prescribed as a pen-
19 alty for any crime against the state.

20 Mr. Campbell.

21 DELEGATE CAMPBELL: Mr. Chairman, if I may. I
22 won't take a great deal of time on this to discuss it. I
23 think the issue is pretty well discussed and most of us have
24 our opinion on whether or not we're for it or against it. We
25 have decided as a Constitutional Convention not to place it

1 in the Constitution on the ballot. It is a large question.
2 It's one that I think the people themselves should decide.
3 One of the booklets that our committee received while consider-
4 ing this matter was The Case Against Capital Punishment, a
5 hundred and fifty of which have been passed out. You may or
6 may not have had a chance to read it. It goes into many of
7 the areas that have been discussed here today and I feel that
8 if the people of Montana will take the time to discuss it that
9 they can come to their proper decision on the June sixth ballot
10 as a side issue. I think that if you follow the development
11 of capital punishment you will know that back in the eighteenth
12 century capital punishment was used in such things as a deter-
13 rent as fishing in a private stream, robbery of a rabbit war-
14 ren, and as a deterrent, the crime of pickpocketing but they
15 found out that pickpocketing was going on at the time of a
16 hanging for the same crime. Michigan, in 1846, which was a
17 hundred and twenty-six years ago, was the first state to abol-
18 ish it. Since then we have thirteen other states. California,
19 as you know, by their supreme court abolished it, and the
20 United States supreme court is considering abolishing it, which
21 would affect Montana, of course, as being cruel and unusual
22 punishment.

23 (Chairman Graybill gaveled for quiet.)

24 CHAIRMAN GRAYBILL: Go ahead, Mr. Campbell.

25 DELEGATE CAMPBELL: Thank you. The present majority

1 report does not in any way abolish the death penalty, which is
2 still in the statutes of Montana. If the people themselves
3 decide on this side issue that they do wish to abolish the
4 death penalty, I think they should have every opportunity and
5 right to do so. I have one other matter I would bring in the
6 closing. I don't know how much debate this would require. I
7 feel it is a proper item to be considered on the ballot as a
8 side issue.

9 CHAIRMAN GRAYBILL: Mr. Kelleher.

10 DELEGATE KELLEHER: Mr. Chairman, I move to amend
11 the proposal of my learned brother, Campbell, to read as
12 follows: The death penalty shall not be authorized except
13 for the murder of policemen or prison guards on duty and for
14 the commission of a second capital felony.

15 CHAIRMAN GRAYBILL: Very well, Mr. Kelleher has pro-
16 posed an amendment to Mr. Campbell's proposal. Do you mean
17 then to have your language, which is on your sheet, Mr. Kelle-
18 her, as an amendment to the section -- do you mean to have it
19 as a matter to go on the ballot?

20 DELEGATE KELLEHER: Yes. It's the third one, Mr.
21 Chairman, on that list.

22 CHAIRMAN GRAYBILL: Yes. Do you have that sheet
23 with Mr. Kelleher's amendment? It's number three but the
24 title of it needs to be changed to move to put it on the bal-
25 lot, and the substance of Mr. Kelleher's amendment is that the

1 death penalty would not be authorized except for the murder of
2 policemen or prison guards on duty or for the commission of a
3 second capital felony.

4 Mr. Schiltz.

5 DELEGATE SCHILTZ: Mr. Chairman, I'm going to attempt
6 to do a service to both of these movements. I will suggest to
7 both of you, if you lose this today, you've very well had it.
8 Now, if you wait until you find the relative importance of this
9 thing by letting the Style and Drafting Committee come in with
10 a report and possibly recommending this and with the possibil-
11 ity of amending that report to include this, you are going to
12 have a much better shot at it than if you try to bind the
13 Style and Drafting Committee in its proposed ballot. I will
14 say once again what I said last Saturday that each issue as
15 it's hot is the most important thing we're looking at and the
16 day after tomorrow it wanes just a little bit and it doesn't
17 become so important, and you're just going to bind us to do
18 something that is going to eliminate some other issue and I
19 urge the members of this committee to reject any binding of
20 the Style and Drafting Committee on its ballot as of any hot
21 moment. Thank you, Mr. Chairman.

22 CHAIRMAN GRAYBILL: Mr. Brown.

23 DELEGATE BROWN: Mr. President, I concur with Mr.
24 Schiltz and I thought we were told that they would make the
25 recommendations and then we'd vote on all of them. As a re-

1 sult of that, I voted against Mrs. Babcock on the anti-diver-
2 sion because I thought it was an improper motion at that time,
3 but I thought this was up to Style and Drafting and I don't
4 want to make a decision on everything that's going on the bal-
5 lot until we know all the issues.

6 CHAIRMAN GRAYBILL: Mr. Brown, that may require a
7 comment from the Chair. The Chair doesn't invite these. I
8 just take them when they send them up.

9 DELEGATE BROWN: I'm not criticizing the Chair.

10 CHAIRMAN GRAYBILL: O.K.

11 Mr. Harper.

12 DELEGATE HARPER: I'd like to ask a question of Mr.
13 Schiltz for clarification and, likewise, I hope all the rest
14 of you listen to the question. Do I understand what you're
15 saying is that the Style and Drafting will decide, after we
16 are through with all the issues, all of these documents, which
17 things are to go as special issues on the ballot or not? In
18 other words, now, we have voted against this motion of having
19 the deletion of the death penalty. That was a clear vote. I
20 was on the losing side but it was a clear vote. Do I under-
21 stand that Style and Drafting may decide, well, actually the
22 Convention didn't really mean to vote against that--they really
23 meant to put it on the ballot, and so you'll come back with
24 that written up that way without any directive from the Con-
25 vention?

1 DELEGATE SCHILTZ: Are you through asking your ques-
2 tion?

3 DELEGATE HARPER: Yes, Mr. Schiltz.

4 DELEGATE SCHILTZ: We won't decide anything. That's
5 your original mistake. I have tried to say over and over
6 again that we will propose a ballot and it may include things
7 that have been rejected by this Convention as things that
8 merit a choice by the voters. Now, if that's wrong, I want
9 to be told by somebody that that's wrong.

10 CHAIRMAN GRAYBILL: Mr. Harper.

11 DELEGATE HARPER: That's the very point of my ques-
12 tion. I think right now we ought to tell the Style and Draft-
13 ing Committee whether this is right or wrong. For example, I
14 take it, the Style and Drafting may come back with the idea
15 that parliament should be an option, along with unicameral and
16 bicameral. If the Style and Drafting Committee decides that
17 anything that has been discussed that wasn't properly settled
18 by the Convention, they can decide to propose -- I realize
19 it's not a final assumption but you can propose it to us and
20 I just never dreamed that Style and Drafting had that kind of
21 power, if you want to call it that. I think the Style and
22 Drafting Committee, if and when this Convention directs that
23 a thing should go on the ballot, should come back with a sug-
24 gested way of putting it on the ballot but not be allowed to
25 suggest what issues should go on the ballot.

1 CHAIRMAN GRAYBILL: Mr. Monroe was up, Mr. Dahood.

2 DELEGATE MONROE: Mr. Chairman, I am against the
3 proposed amendment here, not in so much the intent but in I
4 think we are, by putting this as a side issue or even suggest-
5 ing putting this as a side issue on the ballot, we are doing
6 a disservice to ourselves and to the people of Montana. Rights,
7 individual rights, rights we are trying to include here in the
8 Bill of Rights of the state of Montana, should not be at the
9 mercy of the whims of the majority of the people of this state
10 or any state or any nation, and I think we would be doing a
11 grave disservice if we proposed that there should be anything
12 in regard to the death penalty as a side issue on our ballot
13 that we are proposing for the Montana state constitution, and
14 I would much rather just accept the vote that we just took and
15 go with the majority report rather than putting any of this
16 as a side issue on our ballot.

17 CHAIRMAN GRAYBILL: Mr. Dahood.

18 DELEGATE DAHOOD: Mr. Chairman, I want to completely
19 concur in the remarks of Delegate Harper. I, for one, would
20 not expect to see anything on the ballot that we have rejected
21 on this Convention floor. It seems to me that our decision
22 should be final and should be respected. Thank you, Mr. Chair-
23 man.

24 CHAIRMAN GRAYBILL: Mr. Arbanas.

25 DELEGATE ARBANAS: Mr. Chairman, fellow Delegates,

1 let me reflect, too, that one thing during the debate that im-
2 pressed me was the fact the number of Delegates who voted No
3 and were opposed to this being in the Constitution, you know,
4 made this statement that this should be a side issue and that's
5 where it should be placed and, you know, I respect them for
6 their opinion, and somehow to say that we as a group can't say
7 that's what we want to do is pretty tough procedure. We should
8 be able to say that that's what we want to do. I resist that
9 restriction. I'm sure it's not always wise and I'm not so
10 sure it's wise here but I would hate to see us not able to do
11 that.

12 CHAIRMAN GRAYBILL: Mr. James.

13 DELEGATE JAMES: Mr. Chairman, fellow Delegates,
14 one thing if we do put it as a side issue on the ballot, it
15 could lock it in the Constitution. Now, I kind of think we
16 are tilting at windmills here. We had a very emotional issue
17 yesterday on gun control. Now, I think there's been more
18 light than heat generated. I don't think we're a bunch of
19 guys in white hats and guys in black hats. I think -- I don't
20 think there's any of us here want gun registration. I think
21 there are many of us here that are against the death penalty,
22 although we didn't vote with Mr. Arbanas; we voted to go along
23 with the committee proposal. I wonder how many here would
24 want to drop the pellets in the gas chamber or pull the trap
25 on the -- as the hangman, or push the button in the electric

1 chair. I just don't know. Of course, you let the state do it
2 and you're still responsible, but you do it. But here is two
3 things, federal gun control--you could lock it in the Consti-
4 tution, then the federal government wipes it out, so you've
5 got an archaic thing in the Constitution that doesn't mean
6 anything anyway. If you, by amendment, put the death penalty
7 in the Constitution and the supreme court rules on it and
8 knocks it out, it's another archaic thing. So, why should we
9 clutter up our new Constitution with things that actually will
10 be decided for us?

11 CHAIRMAN GRAYBILL: Mr. Campbell.

12 DELEGATE CAMPBELL: Mr. Chairman, fellow Delegates,
13 fellow Delegate James is on the same committee, the Bill of
14 Rights, and I'm afraid he misunderstands the nature of my
15 motion, at least. My motion is to allow the people to decide
16 whether or not they want to abolish the death penalty. If
17 they vote No, that provision does not go in the new Constitu-
18 tion and it is left up to the legislature, as the majority of
19 the Bill of Rights Committee had recommended. This is not an
20 either/or between two -- one that will require it or one that
21 will abolish it. It's whether or not the people want to
22 abolish it, yes or no. If they don't want to abolish it, the
23 legislature still has it on the books and it would still be
24 into effect. I would resist the amendment suggested by Dele-
25 gate Kelleher. I think that this would lock something into

1 the Constitution. This would not allow the legislature to have
2 the complete flexibility that it should have, and I think the
3 issue should clearly be presented -- do we want to have the
4 death penalty or not -- and I feel we should give it to the
5 people to decide. In the book on capital punishment they point
6 out that some of these murders in prison have actually been
7 committed by the people who wanted to commit suicide and force
8 the state to kill them, so I feel that Mr. Kelleher's amend-
9 ment is ill-advised and I would oppose it and urge that it be
10 rejected.

11 CHAIRMAN GRAYBILL: Mr. Scanlin, did you want the
12 floor?

13 DELEGATE SCANLIN: Mr. Chairman, I was just inquiring
14 a point of order and I was trying to write it out here. It
15 seems to me that the Chair should rule on whether or not this
16 is a legitimate part of the discussion, that is to entertain a
17 motion which is divorced from section twenty-eight.

18 CHAIRMAN GRAYBILL: Yes, I see your point. And since
19 you have raised it, the Chair will rule that it is a legiti-
20 mate time to debate it. We have had so much debate on it, I
21 don't want to do that all over again and I want to catch it
22 right now while everybody is knowledgeable on the subject.

23 Mr. Scanlin.

24 DELEGATE SCANLIN: Mr. Chairman, I feel we're ex-
25 hausted on that subject. We have beat the death penalty to

1 death.

2 CHAIRMAN GRAYBILL: Stick around, Mr. Scanlin.

3 (Laughter)

4 CHAIRMAN GRAYBILL: Mrs. Eck.

5 DELEGATE ECK: Mr. Chairman, could I direct a ques-
6 tion to Mr. Schiltz?

7 CHAIRMAN GRAYBILL: Mr. Schiltz.

8 DELEGATE SCHILTZ: I yield.

9 DELEGATE ECK: Mr. Schiltz, I believe that we are
10 concerned in one aspect of this about what is the proper way
11 of calling attention or getting some consideration from your
12 committee, and as I understand it, it was suggested to us that
13 we could submit a resolution asking your committee to consider
14 something. It was suggested this morning that a petition
15 could be circulated among Delegates, asking your committee to
16 consider something. Would it be more appropriate, rather than
17 directing you at this time, to put in a motion asking your
18 committee's consideration of an issue?

19 DELEGATE SCHILTZ: That only came to me as a rumor.
20 I have no official knowledge that there is going to be any
21 form of resolution or anything else. I want to reassure Mr.
22 Harper and Mr. Dahood and a great many others of you that this
23 is no great amount of power that is in the committee. This
24 happens to be the hardest working committee in the place and
25 we're overburdened and let me assure you that if we can get

1 out of putting this thing together, we'd be happy to get out
2 of it, wouldn't we, Jim and Rich and everybody else on our
3 committee? But we conceived, and this is our conception from
4 osmosis, I suppose, we picked it up, that this is the way the
5 ballot is going to be prepared. We look at other people's
6 ballots and they have alternatives on it and it has come from
7 the Style and Drafting Committee and as a matter of fact, it's
8 just another form of reconsideration after we put that thing
9 out to this body. We are not drunk with power; we don't even
10 want the power, but we have it. If you want to do it by re-
11 solution and you have eighty-seven names on it, we'll con-
12 sider it. I haven't seen anything about a resolution.

13 DELEGATE ECK: Thank you.

14 CHAIRMAN GRAYBILL: Mr. Harbaugh.

15 DELEGATE HARBAUGH: Mr. President, I spoke in be-
16 half of the amendment that Mr. Arbanas made, but I think at
17 this point I agree with the remarks that were made by Mr.
18 James a few moments ago, and I will vote against a motion to
19 place this in the alternative on the ballot. I am satisfied
20 that we had a good discussion of it here. I think that if
21 this body feels that it does not want to include that pro-
22 vision, then it should not go on the ballot and I would be
23 against the motion and against the amendment to the motion.

24 CHAIRMAN GRAYBILL: Now, the Chair is going to en-
25 tertain the rest of your debate but the Chair wants to point

1 out that we do have these motions and people do have the right
2 to make them and I think the body has the right to instruct
3 Style and Drafting, or it has a right not to, and you people
4 have to decide it. But, let's now try to stick if we can to
5 Mr. Kelleher's amendment which is whether you want the thing
6 on the ballot to say, if it went there, which we're going to
7 decide too -- The death penalty shall not be authorized except
8 for the murder of policemen or prison guards on duty, and for
9 the commission of a second capital felony. Now, if you have
10 something to say on that, let's decide it and then we'll vote
11 on that and we'll go ahead and vote on Mr. Campbell's motion
12 as to whether to put it on the ballot, and then we'll go ahead
13 and vote on twenty-eight again.

14 Mr. Aronow.

15 DELEGATE ARONOW: Mr. Chairman, would Mr. Kelleher
16 yield to a question?

17 CHAIRMAN GRAYBILL: Mr. Kelleher?

18 DELEGATE KELLEHER: Yes.

19 DELEGATE ARONOW: Bob, in looking at the language
20 in this thing -- The death penalty shall not be authorized ex-
21 cept for the murder of policemen or prison guards on duty, and
22 for the commission of a second capital felony. Could this be
23 so construed -- in looking at it, there's a doubt in my mind
24 that the death penalty must be meted out if there's a convic-
25 tion in the last part in those two or three instances.

1 DELEGATE KELLEHER: For those three cases--the murder
2 of a policeman or (b) a prison guard on duty, or three, a com-
3 mission of a second capital felony. It is not my -- that's a
4 good question and it was raised earlier. It's a very good
5 question but it is not my intent. That's what I'm going to
6 say for the record. It is not my intent that that be the
7 case.

8 DELEGATE ARONOW: O.K.

9 CHAIRMAN GRAYBILL: Mr. Holland.

10 DELEGATE HOLLAND: Mr. Chairman, I am against the
11 death penalty and I intend to vote, but I received a letter
12 from a constituent which has a different viewpoint and I want
13 to read this to the Convention. I think it's quite important.
14 (Reading) The Honorable Mr. Holland, Montana Con-Con, State
15 Capitol, Helena, Montana. Mr. Holland: I would like to state
16 my opinion on capital punishment. I think the people have the
17 right to make a murderer pay for his crime with his life. I
18 think if a murderer has been convicted and the state lawfully
19 convicts him, he should pay for it with his life instead of
20 being able to sponge off the people. I mean, we let a murderer
21 kill somebody and then let them sit around while we give him a
22 vacation for the rest of his life at our expense. This is not
23 justice to me. I understand that sometimes a man may be con-
24 victed unjustly but this is just something you have to take
25 the good with the bad --

1 (Laughter)

2 DELEGATE HOLLAND: Now, I'm going to make an amend-
3 ment if these two bills don't, that if we keep the death pen-
4 alty that the state of Montana be restricted to hanging no more
5 than ten innocent people a year.

6 (Laughter)

7 DELEGATE HOLLAND: And I'm quite serious about this.
8 England abolished the death penalty when they found out they
9 hung a man unjustly, a man who was not guilty of the crime,
10 and I am convinced, in this day and age -- we haven't had an
11 execution, I think, since 1966 or 1967 -- I'm convinced that
12 if we do one thing right, we should abolish this death penalty
13 and do it today.

14 CHAIRMAN GRAYBILL: Very well, the issue is on --
15 Mr. Simon.

16 DELEGATE SIMON: Mr. Chairman, I have been listening
17 very, very carefully to what everyone has had to say and I
18 didn't want to say anything until I heard a great many people.
19 I had an experience in my life that -- it was as gruesome as
20 my friend over here -- when a fourteen year old girl left my
21 store in Bridger, Montana, and the man that killed her brought
22 her back in an hour, seated in his automobile, and drove up
23 within a quarter of a block of my mother's home. Now, that's
24 the gruesome part of it. But, I think most of you know that
25 I spent five years on your board of pardons of the state of

1 Montana. I think most of you know that at the time the board
2 of pardons was formed that there were six hundred and eighty-
3 five people in prison. I think that most of you know that to-
4 day there's only two hundred and forty or fifty in prison and
5 most of them are out on parole or being given deferred senten-
6 ces. Now, today, with my conscience and my upstairs doing
7 something to down here where your heart is, I voted green and
8 we lost. Now, I did that for a very, very specific reason.
9 And I believe that what we have done here today has put us in
10 a position that we are in at this moment; this hundred people,
11 these hundred people here today are saying to themselves, I
12 would not be the one that pulled the rope, and if we took a
13 vote on that, I think we would have gotten a bigger vote in the
14 green side. But I thought perhaps under some circumstances
15 we must consider, or should consider -- the fact is, we should
16 give the people of Montana --. Now, each one of us represents
17 about seven thousand people. We should give the people of
18 Montana the opportunity to say whether they want to abolish
19 capital punishment. Now, the reason I voted as I did today --
20 and I want to be very specific -- that I have sat closer to
21 more murderers, I believe, than anybody in this room because
22 I sat right across the desk in the prison, back in a little
23 room they call the mug room, and interviewed forty-four hundred
24 interviews -- twenty-two hundred and some people -- on this
25 board of pardons in five years. Now, the reason I voted like

1 I did, and with the hope that we could give the people a chance
2 on the ballot to ask these people, I thought perhaps if we
3 could take some time through the courts to find out how many
4 people come into this state and are only in here from one day
5 to three weeks that commit some of our most dastardly crimes
6 from other states. You'd be astounded. The second reason I
7 voted as I did, every murderer is innocent and there was times
8 in my life that I sat in front of a man -- it was right -- I
9 was always in the middle of the desk -- he was right there --
10 where I was not sure that that man had been convicted of the
11 crime. Now, they're all innocent, you understand, when they
12 go to prison, but I was not sure that I could make that de-
13 cision to turn that man loose. I could not make that decision
14 if I had to, if I was going to say, you put that man on the
15 gallows and I'll pull the string. I could not make that de-
16 cision today. That's the reason I voted the other way. I
17 would like a study made of our state that would indicate in
18 our major crimes of murder and rape, some sort of an analysis
19 made of how many crimes are committed within one month, one
20 year, two years, that are not our residents. I believe that
21 this should go on the ballot. The people should, of the state
22 of Montana, should be given the opportunity to make this de-
23 cision. I don't think we're making the right decision today.
24 I think all of us voted as an individual, what we would do
25 and not what the people of Montana would do. I urge you to

1 put this on the ballot. If you have any doubts in your mind
2 about how many come in here and commit dastardly crimes, you
3 go down to the prison when the board of pardons meets, espec-
4 ally if they have six hundred and eighty-five, and listen to
5 people who have been in the state for a few hours and have
6 raped grandmothers, mothers, daughters -- not once, but under
7 three occasions on one conviction. Thank you very much,
8 ladies and gentlemen.

9 CHAIRMAN GRAYBILL: Now, the Chair hopes to get a
10 vote soon on these two things on the ballot, but Mrs. Babcock,
11 you have been up before.

12 DELEGATE BABCOCK: Mr. Chairman, would a motion be
13 in order to submit this issue of how we're going to put things
14 on the ballot to the Rules Committee so this could finally be
15 decided? I think it affects some of our votes.

16 CHAIRMAN GRAYBILL: I don't think it would be in
17 order before we take these votes. The point is, this body can
18 do whatever it wants to. It can send directions to Style and
19 Drafting, it cannot send directions to Style and Drafting, it
20 can send the whole thing to the Rules Committee if you want
21 to, but this body can do as it pleases. I'm not trying to
22 tell them and I don't think any of us can, and you may make
23 a motion, I suppose -- I suppose the only motion that would be
24 in order now would be a substitute motion to segregate, or to
25 refer these matters to the Rules Committee, but I don't think

1 you intend to refer the death penalty matter to the Rules
2 Committee, you intend to refer the issue to the Rules Commit-
3 tee, and if you want to do that, you certainly may. But, my
4 point is that these things come up when people have them and
5 send them and that we have to vote on them and decide them.
6 That's all I'm trying to do.

7 DELEGATE BABCOCK: I hope we can figure out some
8 way how this body can do it.

9 CHAIRMAN GRAYBILL: Mr. Studer has been up.

10 DELEGATE STUDER: I just wanted to clear up a point.
11 Are we voting on Kelleher's deal as an alternative?

12 CHAIRMAN GRAYBILL: Mr. Kelleher moved that as an
13 alternative to Mr. Campbell's.

14 DELEGATE STUDER: Well, it doesn't say so on the
15 sheet I've got.

16 CHAIRMAN GRAYBILL: No, but I've twice pointed out
17 that you should amend the sheet, Mr. Studer, so that it says:
18 I move to put on the ballot the following.

19 DELEGATE STUDER: O.K., thank you very much.

20 CHAIRMAN GRAYBILL: O.K. Are there further questions
21 on Mr. -- before we go to vote on Mr. Kelleher's motion?

22 Mr. Heliker.

23 DELEGATE HELIKER: Mr. Chairman, I wonder if we
24 couldn't take just a couple of minutes to eliminate the con-
25 fusion in my mind, and I think in the minds of most of the

1 Delegates, as to what the power of Style and Drafting Committee
2 is. In Rule Fifty-One it says that the Committee on Style
3 shall prepare for submission to the electorate the proposals
4 of the Convention and a ballot. Now, I don't see how they
5 can come back and propose to us something that we have voted
6 down. How can they -- it isn't a proposal of the Convention
7 unless we voted for it.

8 CHAIRMAN GRAYBILL: Mr. Eskildsen.

9 DELEGATE ESKILDSEN: Mr. Chairman, fellow Delegates,
10 I don't have the authority probably to give you a decision on
11 what we do, but I can assure you that anything the majority
12 here doesn't vote for certainly will not be done and Style
13 and Drafting cannot do it. We have to have a majority vote
14 in this body on any motion that is made and it will so carry
15 and that's the way it will be done. So, what Style and Draft-
16 ing does, it will have to be with this body's sanction.

17 CHAIRMAN GRAYBILL: Mr. Champoux.

18 DELEGATE CHAMPOUX: You know, about once a week I
19 get confused.

20 CHAIRMAN GRAYBILL: It's not Saturday yet, Mr.
21 Champoux.

22 (Laughter)

23 DELEGATE CHAMPOUX: I know, but I'm a day early this
24 week.

25 (Laughter)

1 CHAIRMAN GRAYBILL: Oh, that's right. You've made
2 your point.

3 DELEGATE CHAMPOUX: Wait till tomorrow.

4 (Laughter)

5 CHAIRMAN GRAYBILL: You've made your point. Do you
6 want to sit down while you're ahead, Mr. Champoux?

7 (Laughter)

8 DELEGATE CHAMPOUX: You know, I think this whole
9 business about Style and Drafting could turn out to be a real
10 dangerous thing and a lot of things could be read into it.
11 For instance, if we get a motion back from Style and Drafting
12 that they feel a certain thing should be on the ballot, isn't
13 that indirectly a move to reconsider, sir?

14 CHAIRMAN GRAYBILL: Are you asking the Chair a
15 question?

16 DELEGATE CHAMPOUX: Yes, sir.

17 CHAIRMAN GRAYBILL: The Chair has never suggested
18 that the way to get things on the ballot is to wait for Style
19 and Drafting. Style and Drafting has suggested that. The
20 Chair thinks that this body -- if you want to know what the
21 Chair thinks, I think this body has to suggest or send some-
22 thing to Style and Drafting, as we did the first day with uni-
23 cameral, and tell them to put it on the ballot. Now, if we do
24 that, I think they'd tell us how. I'm trying not to debate
25 this but my view is you have to tell them. I don't think they

1 should come up with new suggestions out of the blue. I don't
2 really think they're going to.

3 DELEGATE CHAMPOUX: All right, thank you, sir.

4 CHAIRMAN GRAYBILL: I think maybe they're, in an
5 abundance of caution, trying to keep the issues down. All
6 right, are we ready to vote on this issue? The issue is Mr.
7 Kelleher's motion, which is a substitute motion, to put on
8 the ballot the following words: The death penalty shall not
9 be authorized except for the murder of policemen or prison
10 guards on duty, and for the commission of a second capital
11 felony. The way, the precise way in which it would go on the
12 ballot would be up to Style and Drafting, but whether or not
13 to make that an issue to go on the ballot is what we're talk-
14 ing about. Mr. Kelleher, do you want to close or do you just
15 want to --

16 DELEGATE KELLEHER: No, I don't want to take the
17 time to close. I think the matter has been very thoroughly
18 discussed, but Mason Melvin has just called to my attention
19 something and I would like to, if there is no objection, sub-
20 stitute for the word, policemen, the words, law enforcement
21 officers, so as to include sheriffs, highway patrolmen, and
22 indeed, for the record, all types of law enforcement officers.

23 CHAIRMAN GRAYBILL: All in favor of allowing Mr.
24 Kelleher to make that amendment, say Aye.

25 DELEGATES: Aye.

1 CHAIRMAN GRAYBILL: Opposed, No.

2 DELEGATES: (No audible response)

3 CHAIRMAN GRAYBILL: So ordered. All right, are you
4 ready for the question then? Those in favor of Mr. Kelleher's
5 motion say Aye.

6 DELEGATES: Aye.

7 CHAIRMAN GRAYBILL: Opposed, No.

8 DELEGATES: No.

9 CHAIRMAN GRAYBILL: All right, that one is defeated.
10 Now we are discussing Mr. Campbell's motion which is to place
11 as a side issue on the ballot the phrase: Death shall not
12 be prescribed as a penalty for any crime against the state.

13 UNIDENTIFIED DELEGATE: Roll call vote.

14 CHAIRMAN GRAYBILL: All right, we'll have a roll
15 call vote. Mr. Campbell, do you want to close?

16 DELEGATE CAMPBELL: I'm certainly not going to spend
17 much time on it. I have received one letter which is the most
18 moving letter I have received since I've been at the conven-
19 tion. It's from an inmate at our own prison and many of us
20 think with all the safeguards, innocent men never get convicted.
21 Of course not. It couldn't happen. I'd just like to read to
22 you. The first part of the letter they were very excited
23 about the first part of this section as an incentive for re-
24 habilitation. On the second page, this is what this man in
25 our prison wrote to me: (Reading) Recently I was faced with

1 a moral dilemma which I later realized never existed. Briefly,
2 a full confession was made to me by another prisoner regarding
3 a murder he had committed. This man further indicated in de-
4 tail how he had successfully framed another individual for
5 this same crime. I'm ashamed to say that for two weeks I
6 kept this information to myself. Fortunately, I was able to
7 muster enough guts to overcome this rather warped sense of
8 values and now I know I have made the right decision. The
9 guilty man has since been convicted while the innocent one
10 has been returned his freedom. (End reading) It can happen.
11 A man lied to convict another man to save himself and with
12 all the safeguards our system has, this can still happen and
13 this is why I think this should be placed on the ballot, that
14 people should consider it, and certainly the majority in the
15 early 1400's knew without thinking about it that the world
16 was flat, and I think this is one thing we are going to have
17 to think about and I would sincerely hope that we give the
18 people of Montana this opportunity to abolish it or let the
19 legislature deal with it. Thank you.

20 CHAIRMAN GRAYBILL: Very well, we'll have a roll
21 call vote. The issue is on Mr. Campbell's amendment to sec-
22 tion twenty-eight to place -- it's in conjunction with twenty-
23 eight -- to place as a side issue on the ballot the following
24 sentence: Death shall not be prescribed as a penalty for any
25 crime against the state. All those in favor vote Aye and

1 those opposed vote No. Has every Delegate voted?

2 (No response)

3 CHAIRMAN GRAYBILL: Does any Delegate wish to
4 change his vote?

5 (No response)

6 CHAIRMAN GRAYBILL: Will the Clerk take the ballot?

7	Aasheim	-	Absent	Bugbee	-	Aye
8	Anderson, J.	-	Nay	Burkhardt	-	Aye
9	Anderson, O.	-	Nay	Cain	-	Aye
10	Arbanas	-	Aye	Campbell	-	Aye
11	Arness	-	Nay	Cate	-	Nay
12	Aronow	-	Aye	Champoux	-	Aye
13	Artz	-	Aye	Choate	-	Aye
14	Ask	-	Aye	Conover	-	Aye
15	Babcock	-	Nay	Cross	-	Aye
16	Barnard	-	Aye	Dahood	-	Aye
17	Bates	-	Excused	Davis	-	Aye
18	Belcher	-	Nay	Delaney	-	Nay
19	Berg	-	Aye	Driscoll	-	Aye
20	Berthelson	-	Aye	Drum	-	Absent
21	Blaylock	-	Aye	Eck	-	Aye
22	Blend	-	Aye	Erdmann	-	Aye
23	Bowman	-	Aye	Eskildsen	-	Nay
24	Brazier	-	Nay	Etchart	-	Nay
25	Brown	-	Nay	Felt	-	Absent

1	Foster	-	Aye	McCarvel	-	Aye
2	Furlong	-	Excused	McDonough	-	Aye
3	Garlington	-	Nay	McKeon	-	Aye
4	Gysler	-	Nay	McNeil	-	Nay
5	Habedank	-	Aye	Melvin	-	Nay
6	Hanson, R. S.	-	Aye	Monroe	-	Nay
7	Hanson, R.	-	Aye	Murray	-	Nay
8	Harbaugh	-	Nay	Noble	-	Nay
9	Harlow	-	Nay	Nutting	-	Nay
10	Harper	-	Aye	Payne	-	Nay
11	Harrington	-	Aye	Pemberton	-	Nay
12	Heliker	-	Aye	Rebal	-	Nay
13	Holland	-	Aye	Reichert	-	Aye
14	Jacobsen	-	Aye	Robinson	-	Aye
15	James	0	Aye	Roeder	-	Aye
16	Johnson	-	Nay	Rollins	-	Aye
17	Joyce	-	Nay	Romney	-	Aye
18	Kamhoot	-	Nay	Rygg	-	Aye
19	Kelleher	-	Aye	Scanlin	-	Aye
20	Leuthold	-	Aye	Schiltz	-	Aye
21	Loendorf	-	Aye	Siderius	-	Aye
22	Lorello	-	Aye	Simon	-	Aye
23	Mahoney	-	Nay	Skari	-	Aye
24	Mansfield	-	Nay	Sparks	-	Aye
25	Martin	-	Nay	Speer	-	Nay

1	Studer	-	Nay	Wagner	-	Nay
2	Sullivan	-	Aye	Ward	-	Nay
3	Swanberg	-	Aye	Warden	-	Absent
4	Toole	-	Absent	Wilson	-	Nay
5	Van Buskirk	-	Aye	Woodmansey	-	Aye
6	Vermillion	-	Aye	Mr. Chairman	-	Aye

7 CLERK HANSON: Mr. Chairman, fifty-eight Delegates
8 voting Aye, thirty-five voting No.

9 CHAIRMAN GRAYBILL: Fifty-eight Delegates having
10 voted Aye and thirty-five No, Mr. Campbell's motion prevails
11 and that will be sent to Style and Drafting for that purpose.

12 Mr. Murray.

13 DELEGATE MURRAY: Mr. Chairman, I move the committee
14 recess for fifteen minutes, until three-thirty-five this day.

15 CHAIRMAN GRAYBILL: Now, ladies and gentlemen, we
16 are going to learn, I think, that we have to wait until this
17 motion is put. Mr. Rygg, do you have a -- do you wish to be
18 heard?

19 DELEGATE RYGG: I wanted to make a committee an-
20 nouncement. Is it possible to do that now?

21 CHAIRMAN GRAYBILL: Yes, sir.

22 DELEGATE RYGG: I would like to have a Revenue and
23 Finance in room 437 immediately upon recess. Thank you, Mr.
24 Chairman.

25 CHAIRMAN GRAYBILL: Very well. Now, all in favor

1 of recessing for fifteen minutes please say Aye.

2 DELEGATES: Aye.

3 CHAIRMAN GRAYBILL: Opposed, No.

4 DELEGATES: (No audible response)

5 CHAIRMAN GRAYBILL: Thank you. Recess.

6

7 (Committee in recess from 3:20 o'clock
8 until 3:50 o'clock, P.M.)

9 CHAIRMAN GRAYBILL: The committee will come to order,
10 please. The committee meeting will please come to order. Is
11 there other discussion of section twenty-eight?

12 Mr. Habedank.

13 DELEGATE HABEDANK: I have a motion which I'd like
14 the Clerk to read.

15 CHAIRMAN GRAYBILL: Right. The Clerk will read Mr.
16 Habedank's amendment.

17 CLERK HANSON: (Reading) Mr. Chairman, I move to
18 amend section twenty-eight, page forty, by addition of the fol-
19 lowing: (quote) Nothing contained in this section shall be --
20 allow a person convicted of crime to continue in or enter any
21 business, trade, occupation or profession when prohibited from
22 engaging therein by the licensing provisions provided by law.
23 (End quote) Signed, Habedank.

24 DELEGATE HABEDANK: Mr. President.

25 CHAIRMAN GRAYBILL: Mr. Habedank, your amendment

1 which would add a sentence to twenty-eight to the effect that
2 anyone convicted of a crime may not enter a trade, business or
3 occupation which -- wherein he is prohibited by licensing pro-
4 visions to do so, will be allowed and you may discuss it.

5 DELEGATE HABEDANK: Mr. President, the Bill of
6 Rights Committee, in their presentation on the floor before,
7 very forthrightly said that it was their intention in the ad-
8 option of this article that when any person had served his sen-
9 tence he was to be restored both to his political rights and
10 to his civil rights which meant, as they explained it in ans-
11 wer to a specific question by myself, that if I as a lawyer
12 were convicted of a crime, sent to the penitentiary, served my
13 sentence, I would automatically be restored to the practice of
14 my profession when I finished my sentence. Each profession,
15 whether it's lawyer, doctor, certified public accountant, or
16 any of the other professions have licensing boards who exercise
17 some discretion as to whether or not a person should be ad-
18 mitted to practice, and in the exercise of that discretion, I
19 think it is proper that they should not, for the mere fact that
20 a person has been in the penitentiary alone, be allowed to re-
21 fuse his admittance to practice. But the mere fact that a
22 person has completed his sentence does not, in my opinion,
23 necessarily entitle him to full faith and credit and be return-
24 ed to a profession. Licensing provisions are made for the pro-
25 tection of the public. I think the licensing boards in each

1 of the professions are people of character and discretion and,
2 as I read this provision as given by the majority, they would
3 not have this discretion. They would automatically be required
4 to restore a person to his profession and I think this is going
5 too far as a matter of constitutional law. The legislature
6 should be left some discretion in this matter and, as I look
7 at it, my amendment would do this and I urge your support of
8 the amendment.

9 CHAIRMAN GRAYBILL: Is there discussion?

10 Mr. Campbell.

11 DELEGATE CAMPBELL: Mr. Chairman, I rise to oppose
12 the proposed amendment of Mr. Habedank's. Certainly nothing
13 is a greater threat to rehabilitation than the present restric-
14 tions we have placed on people whom, at the end of their sen-
15 tence--not just the time that they're released from prison but
16 the time at which they are released from supervision, the time
17 at which we tell them, you have paid your debt to society we
18 are going to restore your rights. This is what we determined
19 in the Bill of Rights Committee would be only fair. At the
20 present time a person can not -- there is no discretion in the
21 board. If you have a felony in your record, you cannot engage
22 in these occupations that the Montana legislature has provided
23 felony restrictions on. They include approximately twenty-
24 three professions. It has gone all the way from the doctors,
25 the lawyers, the teachers, all the way through the barbers and

1 to the last classification the legislature put that a felon
2 could not engage in, and that is an artificial inseminator for
3 cattle. Now, I say to you, the legislature is going too far,
4 that there is no reasonable relationship between a person's
5 past record and the ability to practice any meaningful occupa-
6 tion in this state. This would be a step forward. It would
7 judge a man on his merits. I still feel if he was unfit to
8 practice his particular profession, it could certainly be hand-
9 led by the legislature. We do not intend to bind this in as
10 far as that goes. It's my position that right now there is no
11 discretion on the boards at all; that if there is truly some
12 relationship between a man's fitness to practice his profes-
13 sion, then certainly the board should and will have it even
14 under this amendment. It's just saying we are giving him the
15 presumption when he starts out that he's capable, that he has
16 paid his debt, that he can engage in some meaningful occupa-
17 tions which he cannot now. For the rest of his life he is, at
18 the present time, excluded from all of these occupations and
19 he is certainly rejected from the system, and I think that if
20 we are going to have rehabilitation we are going to have to
21 start with a clean slate. I have talked with the parole board
22 on this. They have been very excited about this. This is one
23 thing that would certainly help them in the rehabilitation and
24 I oppose the amendment. I feel it is destroying the very thing
25 we are trying to do and that is to make useful citizens out of

pe

1 people who have made a mistake and paid their debt. Thank you.

2 CHAIRMAN GRAYBILL: Is there further discussion?

3 Mr. Habedank.

4 DELEGATE HABEDANK: Mr. Chairman, I would like to
5 close. In answer to what Mr. Campbell has said, he is correct
6 up to a point. The legislature can change this and when we
7 lock it in the other way, I submit to you that we are locking
8 into the Constitution a provision that will prohibit you from
9 protecting the public through the legislature.

10 CHAIRMAN GRAYBILL: Very well, the issue is on Mr.
11 Habedank's -- Mr. Studer, did you want to speak?

12 DELEGATE STUDER: No, I just wanted to ask if we
13 could have that read to us -- that amendment.

14 CHAIRMAN GRAYBILL: I'm going to read it to you.

15 DELEGATE STUDER: O.K.

16 CHAIRMAN GRAYBILL: The issue is on Mr. Habedank's
17 motion that we add the following language to section twenty-
18 eight: Nothing contained in this section shall allow a person
19 convicted of crime to continue in or enter any business, trade,
20 occupation or profession when prohibiting from engaging therein
21 by the licensing provisions provided by law. Nothing contained
22 in this section shall allow a person convicted of a crime to
23 continue in or enter any business, trade, occupation or pro-
24 fession when prohibited from entering therein by the licensing
25 provisions provided by law. So many as shall be in favor --

1 UNIDENTIFIED DELEGATE: Roll call.

2 CHAIRMAN GRAYBILL: Roll call. So many as shall be
3 in favor of adding that to section twenty-eight on the Bill of
4 Rights, please vote Aye. So many as shall be opposed, vote No.
5 Have all the Delegates voted?

6 (No response)

7 CHAIRMAN GRAYBILL: Does any Delegate wish to change
8 his vote?

9 (No response)

10 CHAIRMAN GRAYBILL: Will the Clerk take the vote?

11 Aasheim	-	Nay	Blend	-	Nay
12 Anderson, J.	-	Aye	Bowman	-	Aye
13 Anderson, O.	-	Absent	Brazier	-	Absent
14 Arbanas	-	Nay	Brown	-	Absent
15 Arness	-	Nay	Bugbee	-	Nay
16 Aronow	-	Aye	Burkhardt	-	Nay
17 Artz	-	Aye	Cain	-	Nay
18 Ask	-	Aye	Campbell	-	Nay
19 Babcock	-	Nay	Cate	-	Nay
20 Barnard	-	Nay	Champoux	-	Nay
21 Bates	-	Excused	Choate	-	Absent
22 Belcher	-	Aye	Conover	-	Nay
23 Berg	-	Aye	Cross	-	Nay
24 Berthelson	-	Aye	Dahood	-	Nay
25 Blaylock	-	Nay	Davis	-	Nay

1	Delaney	-	Absent	Kamhoot	-	Aye
2	Driscoll	-	Absent	Kelleher	-	Nay
3	Drum	-	Aye	Leuthold	-	Aye
4	Eck	-	Nay	Loendorf	-	Nay
5	Erdmann	-	Aye	Lorello	-	Nay
6	Eskildsen	-	Absent	Mahoney	-	Absent
7	Etchart	-	Nay	Mansfield	-	Absent
8	Felt	-	Aye	Martin	-	Absent
9	Foster	-	Nay	McCarvel	-	Nay
10	Furlong	-	Excused	McDonough	-	Nay
11	Garlington	-	Aye	McKeon	-	Nay
12	Gysler	-	Absent	McNeil	-	Nay
13	Habedank	-	Aye	Melvin	-	Aye
14	Hanson, R. S.	-	Nay	Monroe	-	Nay
15	Hanson, R.	-	Absent	Murray	-	Absent
16	Harbaugh	-	Nay	Noble	-	Aye
17	Harlow	-	Nay	Nutting	-	Aye
18	Harper	-	Aye	Payne	-	Absent
19	Harrington	-	Nay	Pemberton	-	Nay
20	Heliker	-	Nay	Rebal	-	Nay
21	Holland	-	Absent	Reichert	-	Nay
22	Jacobsen	-	Aye	Robinson	-	Nay
23	James	-	Nay	Roeder	-	Nay
24	Johnson	-	Aye	Rollins	-	Nay
25	Joyce	-	Nay	Romney	-	Nay

1	Rygg	-	Nay	Swanberg	-	Nay
2	Scanlin	-	Nay	Toole	-	Absent
3	Schiltz	-	Nay	Van Buskirk	-	Absent
4	Siderius	-	Nay	Vermillion	-	Absent
5	Simon	-	Aye	Wagner	-	Absent
6	Skari	-	Absent	Ward	-	Nay
7	Sparks	-	Nay	Warden	-	Nay
8	Speer	-	Nay	Wilson	-	Aye
9	Studer	-	Aye	Woodmansey	-	Nay
10	Sullivan	-	Nay	Mr. Chairman	-	Nay

11 CLERK SMITH: Mr. Chairman, twenty-four have voted
12 Aye, fifty-four have voted No.

13 CHAIRMAN GRAYBILL: Fifty-four having voted No and
14 twenty-four Aye, the motion fails. Is there other discussion
15 of section twenty-eight?

16 (No response)

17 CHAIRMAN GRAYBILL: Members of the committee, you
18 have before you for your consideration section twenty-eight,
19 and you've had the recommendation of Mr. James that when this
20 committee does rise and report, after having it under consid-
21 eration, that we recommend it be adopted. All in favor say
22 Aye.

23 DELEGATES: Aye.

24 CHAIRMAN GRAYBILL: Opposed, No.

25 DELEGATES: No.

1 CHAIRMAN GRAYBILL: Section twenty-eight is adopted.
2 Will the Clerk read section twenty-nine?

3 CLERK SMITH: (Reading) Section twenty-nine, Eminent Domain: Private property shall not be taken or damaged
4 for public use without compensation to the full extent of the
5 loss having been first made to or paid into court for the
6 owner. In the event of litigation, just compensation shall
7 include necessary expenses of litigation to be awarded by the
8 court when the private property owner is the prevailing party.
9 (End reading) Section twenty-nine, Mr. Chairman.
10

11 CHAIRMAN GRAYBILL: Mr. James.

12 DELEGATE JAMES: Mr. Chairman, thanks for reminding
13 me I brought up section twenty-eight. It seems like a long
14 time ago.

15 (Laughter)

16 CHAIRMAN GRAYBILL: How about section twenty-nine,
17 Mr. James?

18 (Laughter)

19 DELEGATE JAMES: Thank you, Mr. Chairman. Mr. Chairman,
20 I move that when this committee does rise and report,
21 after having under consideration section twenty-nine of proposal
22 number eight, it recommends that the same be adopted.
23 Mr. Chairman, the committee unanimously approved substantive
24 changes in the eminent domain section. The thrust of the committee
25 effort was to assure that full and just compensation --

1 that full and just compensation be made in all eminent domain
2 actions. Without it, some of the costs of eminent domain ac-
3 tion fall where they do not belong--on the person whose proper-
4 ty is being condemned. In order to give substance to the cit-
5 izen's effort to challenge the compensation figure of the con-
6 demnor, the last sentence of this provision was added. Those
7 testifying in opposition to the committee's original eminent
8 domain proposal agreed that this sentence, which awards neces-
9 sary expenses of litigation to the private property owner when
10 he is the prevailing party, is just. The committee intends
11 by necessary expenses of litigation all costs including ap-
12 praisers' fees, attorney fees and court costs. It is felt
13 that when this stipulation will produce a climate in which the
14 condemnor's offer for compensation will more adequately reflect
15 the compensation to which the property owner is entitled. The
16 property owner will have a chance to collect the expenses he
17 incurs in challenging the condemnor's action. In addition,
18 it will redress the imbalance between the vast resources
19 brought to bear by the state and those available to the indi-
20 vidual property owner in contested cases. The committee recom-
21 mends this section to the Convention as insurance that the
22 compensation to the private property owner will in fact be
23 just. Delegate Proposal Number Seventy-Five was amended to
24 accomplish this provision. I think you are all familiar with
25 the term, the public good. Sometimes this is rather elusive

1 and is used to condemn property and a figure which may be un-
2 just to the property owner is not contested because of the
3 cost of litigation. This, I believe, will correct this situ-
4 ation. Thank you, Mr. Chairman.

5 CHAIRMAN GRAYBILL: Is there discussion of section
6 twenty-nine?

7 Mr. Davis.

8 DELEGATE DAVIS: Mr. Chairman, I move to amend sec-
9 tion twenty-nine on page forty-one, line twenty-nine, by
10 placing a period after the word, loss, and deleting therefrom
11 the words, having been first made to or paid into court for
12 the owner.

13 CHAIRMAN GRAYBILL: Now, you just want to delete
14 the rest of that sentence, is that right?

15 DELEGATE DAVIS: Yes, sir.

16 CHAIRMAN GRAYBILL: Mr. Davis proposes an amend-
17 ment to section twenty-seven which puts a period after the
18 word, loss, and strikes the words, having been first made to
19 or paid into court for the owner.

20 Mr. Davis.

21 DELEGATE DAVIS: Mr. Chairman, although I confess I
22 have not had extensive experience in this matter that Chair-
23 man Dahood has, in the road problems we've had in our area
24 with the state, the full extent of the loss has not been de-
25 termined until after the road has been constructed. Many

1 people have settled on what they thought were the full extent
2 of the loss, then to find out that the underpasses wouldn't
3 work or that right-of-ways weren't there and so forth. I think
4 that the expansion they made to have the additional cost paid
5 are very fine, but I don't think we want to hold up the whole
6 interstate road program until all the litigation is over, and
7 I don't think that you can make a determination of what the
8 full extent of the loss is until after the construction takes
9 place. We have had many representations made of many land
10 owners in our area who have settled based upon the right-of-
11 way agreements, only to find out subsequently that their front-
12 age roads weren't there or that their other underpasses, in
13 some cases, were not adequate to get stock through or machin-
14 ery from one side of the road or the other, and they were pre-
15 cluded from getting the full amount of their loss. So, I think
16 that this amendment will be in keeping, I hope, with what they
17 have in mind and I don't think that you can stop the program
18 on road construction by having all the litigation settled and
19 I don't think -- this, again, is a two-edged sword. It can
20 work to the detriment of the land owner as well as to his ben-
21 efit and I think it would be much better this way in keeping
22 with an orderly construction program and also better for the
23 owner so they can determine what's actually happened after the
24 construction has taken place, and I'll yield to Mr. Dahood to
25 present his views on this.

1 CHAIRMAN GRAYBILL: Mr. Dahood.

2 DELEGATE DAHOOD: Mr. Chairman, I think Delegate
3 Davis is really addressing himself to the delegate proposal
4 before we changed it. The comments that he has made at the
5 moment in my judgment do not apply to the section as it pre-
6 sently reads. The language that Delegate Davis seeks to omit
7 by his motion is language we have had in the state of Montana
8 for eighty years. The present constitutional provision, ar-
9 ticle three, section fourteen, reads: Private property shall
10 not be taken or damaged for public use without just compensa-
11 tion having been first made to or paid into court for the owner.
12 The reasons that Delegate Davis has given for deleting this
13 particular language relates to an entirely different problem
14 and, of course, the function of the court is to find out what
15 is the full extent of the loss. When condemnation is made by
16 the state of Montana they are required by law to make deposit
17 with the court with respect to the amount that is claimed by
18 the property owner. That property owner is permitted, because
19 it is necessary for him in order to protect his property po-
20 sition, to ask the court for permission to withdraw that sum
21 of money. He is then permitted to present his case to a jury
22 to have that jury determine what is the full extent of the
23 loss. That is the real conflict and the real controversy in
24 an eminent domain proceeding. With respect to whether or not
25 a frontage road is adequate, whether or not the underpass may

1 be sufficient, that is a separate question that is not related
2 necessarily to the amount of compensation. You have the plans
3 of the highway department. They're produced in court. Their
4 engineers testify and the full extent of the loss is based
5 upon what has been presented in that respect. If it turns out
6 that the plans are later changed or that the construction does
7 not fit that particular plan, you have then perhaps a different
8 type of taking and then, under this particular constitutional
9 section, you have what we call inverse condemnation where then
10 the property owner can file a complaint in court and sue the
11 state for an additional taking not within the contemplation of
12 the first award. I took this time to explain for the benefit
13 of the non-lawyer delegates what is involved and I would ask
14 Mr. Davis, Delegate Davis, if he would yield to a question.

15 CHAIRMAN GRAYBILL: Mr. Davis.

16 DELEGATE DAVIS: I yield, Delegate Dahood.

17 DELEGATE DAHOOD: Now, Carl, perhaps I have not re-
18 sponded directly to your position and in order to clarify it
19 so everyone will understand what the situation is, if you have
20 another question I would welcome it at this time.

21 DELEGATE DAVIS: I do have another question, and
22 perhaps more, if you would yield.

23 DELEGATE DAHOOD: I do yield, Mr. Chairman.

24 DELEGATE DAVIS: Your principal change, as I under-
25 stand, in the first sentence of this section from our present

1 Constitution which says, just compensation. Your principal
2 change is to have compensation to the full extent of the loss.
3 Would you explain the difference in adopting that language.

4 DELEGATE DAHOOD: Carl, in my judgment, I don't think
5 it makes any real substantial difference. As you well know,
6 there are many, many, many eminent domain cases decided by the
7 supreme court of the state of Montana dealing with the question
8 of what is the full extent of the loss. I do not think it is
9 going to change the law that expands with time and circumstance.
10 I think we have merely indicated here that we want to be sure
11 that the court continues to recognize that we want the citizen
12 compensated to the full extent of the loss. As you well know,
13 the leading authority on this particular subject of the law
14 is Nichols that contains some eight volumes and most of that
15 work is related to the question of what is the full extent of
16 the loss.

17 DELEGATE DAVIS: Thank you. Will you yield to an-
18 other question?

19 CHAIRMAN GRAYBILL: Mr. Davis. Will you yield, Mr.
20 Dahood?

21 DELEGATE DAHOOD: I do, Mr. Chairman.

22 DELEGATE DAVIS: For the purpose of the record in
23 this matter, Mr. Dahood, is it your thought that the highway
24 construction can then proceed as they now are by either you
25 consenting or getting their take and go ahead with the con-

1 struction before all litigation has been concluded regarding
2 this particular take to determine the full extent of the loss?

3 DELEGATE DAHOOD: Carl, without any doubt; we have
4 not changed the present system whatsoever insofar as the abil-
5 ity of the state highway department to start construction.

6 DELEGATE DAVIS: All right, with that in the record,
7 I'll withdraw my motion.

8 DELEGATE DAHOOD: Thank you very much.

9 CHAIRMAN GRAYBILL: Mr. Davis' amendment is with-
10 drawn. Is there other discussion?

11 Mr. Habedank.

12 DELEGATE HABEDANK: Mr. Chairman, would Mr. Dahood
13 yield to a question?

14 CHAIRMAN GRAYBILL: Mr. Dahood?

15 DELEGATE DAHOOD: Yes, I yield, Mr. Chairman.

16 DELEGATE HABEDANK: Mr. Dahood, for the purpose of
17 the journal in future litigation over interpretation of this
18 term, will you please state into the record what is meant by
19 the words, prevailing party.

20 DELEGATE DAHOOD: By prevailing party I mean, for
21 the record, the property owner, in the event that he is the
22 prevailing party. The only person intended by this particu-
23 lar section and the sentence that has been added -- just com-
24 pensation shall be awarded by the court only -- just compensa-
25 tion shall include expenses of litigation only when the pre-

1 prevailing party is the private property owner.

2 CHAIRMAN GRAYBILL: Mr. Habedank.

3 DELEGATE HABEDANK: Mr. Dahood, I failed to ask the
4 question properly. If the highway department offered the owner
5 five thousand dollars for his property and the owner refused
6 it and went into court and secured a judgment from the jury for
7 less than five thousand dollars, would he then be a prevailing
8 party?

9 DELEGATE DAHOOD: He would not be a prevailing party.

10 DELEGATE HABEDANK: If he obtained five thousand and
11 one dollars, would he be a prevailing --

12 DELEGATE DAHOOD: He would be a prevailing party.

13 DELEGATE HABEDANK: Thank you, Mr. Dahood.

14 CHAIRMAN GRAYBILL: Is there other discussion of
15 section twenty-nine?

16 Mr. Harlow.

17 DELEGATE HARLOW: I merely wish to rise in support
18 of this section. I want to ask Mr. Dahood the one question in
19 between what Mr. Habedank --. Take the same case that Mr.
20 Habedank had and the party received only the five thousand
21 dollars. Would he be prevailing?

22 DELEGATE DAHOOD: He is not the prevailing party in
23 that instance.

24 DELEGATE HARLOW: He's got to get one dollar more.

25 DELEGATE DAHOOD: He has to exceed the offer made

1 by the state of Montana.

2 DELEGATE HARLOW: Thank you. Thank you, Mr. Chairman.

3 CHAIRMAN GRAYBILL: Very well, the issue is on the
4 motion of Mr. James that when this body does rise and report,
5 after having had under consideration section twenty-nine, that
6 it recommend the same be adopted. So many as are in favor of
7 that motion, say Aye.

8 DELEGATES: Aye.

9 CHAIRMAN GRAYBILL: Opposed, No.

10 DELEGATES: (No audible response)

11 CHAIRMAN GRAYBILL: It's adopted. Section thirty,
12 Mr. Clerk.

13 CLERK SMITH: (Reading) Section thirty, Treason and
14 Descent of Estates: Treason against the state shall consist
15 only in levying war against it, or in adhering to its enemies,
16 giving them aid and comfort; no person shall be convicted of
17 treason except on the testimony of two witnesses to the same
18 overt act, or on his confession in open court; no person shall
19 be attainted of treason or felony by the legislative assembly;
20 no conviction shall cause the loss of property to the relatives
21 or heirs of the convicted. The estates of suicides shall de-
22 scend or vest as in cases of natural death. (End reading) Sec-
23 tion thirty, Mr. Chairman.

24 CHAIRMAN GRAYBILL: Mr. Blaylock.

25 DELEGATE BLAYLOCK: Mr. President, I move that when

1 this committee does arise and report, after having had under
2 consideration section thirty of proposal number eight, that it
3 recommend the same be adopted.

4 Mr. President.

5 CHAIRMAN GRAYBILL: Mr. Blaylock.

6 DELEGATE BLAYLOCK: Mr. President, this section reads
7 the same as the section nine in the 1889 Constitution, except
8 for the last -- right -- starting on line seventeen on page
9 ten, and we did change the language there. We took out that
10 business about the corruption of the blood. We thought that
11 sounded a bit obscene and we changed it to no conviction shall
12 cause the loss of property to the relatives or heirs of the
13 convicted. We thought that stated it in better English. And
14 then we changed the last sentence to read: The estates of
15 suicides shall descent or vest as in cases of natural death
16 rather than the old, archaic language of the 1889 Constitution.
17 And we thought about changing the language further but some of
18 the members wanted to leave the language as much as possible
19 as is.

20 CHAIRMAN GRAYBILL: Is there discussion?

21 Mr. Harper.

22 DELEGATE HARPER: Mr. Chairman, will Mr. Blaylock
23 yield to a question?

24 CHAIRMAN GRAYBILL: Mr. Blaylock?

25 DELEGATE BLAYLOCK: I yield.

1 DELEGATE HARPER: How do I go about committing trea-
2 son to the state of Montana?

3 DELEGATE BLAYLOCK: Well, to think up a good example,
4 Mr. Harper, I suppose one case of treason against the state of
5 Montana would be if there were a conspiracy to be formed and
6 they were to, say, storm this building and to try to take the
7 seat of government of the state of Montana. That would be one
8 case of treason against the state. I don't know whether you
9 like it or not.

10 DELEGATE HARPER: Well, no, that's fine. I'm just
11 glad. I'm just grasping for straws because several people
12 here in town have asked me, well, what in the world are you
13 going to have something about treason of the state of Montana.
14 Is somebody going to wage war on Montana? We're talking about
15 aiding its enemies. They fought a war in the 1860's that de-
16 cided that Montana can't -- decided to be a sovereign state
17 and leave the Union, and they pretty well settled that, and I
18 wasn't really able, and I'm -- if you could give me even one
19 other illustration, I'd appreciate it, but storming the Capitol
20 will probably do in Helena.

21 (Laughter)

22 CHAIRMAN GRAYBILL: Are there any other questions or
23 discussion on section thirty?

24 (No response)

25 CHAIRMAN GRAYBILL: Members of the committee, you

1 have before you, on the recommendation of Mr. Blaylock, that
2 when this committee does rise and report, after having had
3 under consideration section thirty, that we recommend the same
4 be adopted. All in favor of that motion say Aye.

5 DELEGATES: Aye.

6 CHAIRMAN GRAYBILL: Opposed, No.

7 DELEGATES: (No audible response)

8 CHAIRMAN GRAYBILL: It's adopted. Section thirty-
9 one, Mr. Clerk.

10 CLERK SMITH: (Reading) Section Thirty-One, Ex Post
11 Facto, Obligation of Contracts and Irrevocable Privileges:
12 No ex post facto law nor law impairing the obligation of con-
13 tracts, or making any irrevocable grant of special privileges,
14 franchises, or immunities, shall be passed by the legislative
15 assembly. (End reading) Section thirty-one, Mr. Chairman.

16 CHAIRMAN GRAYBILL: Mr. James.

17 DELEGATE JAMES: Mr. Chairman, I move that when this
18 committee does rise and report, after having under considera-
19 tion section thirty-one of proposal number eight, it recommends
20 that the same be adopted.

21 CHAIRMAN GRAYBILL: Mr. James.

22 DELEGATE JAMES: Mr. President, I'd like to read the
23 brief comments on this. The committee voted unanimously to
24 retain the former article three of section two unchanged. The
25 protection against ex post facto laws, laws impairing the ob-

1 ligation of contracts and laws granting irrevocable privileges
2 seemed adequate. No delegate proposals were received on this
3 provision. With this ex post facto in here, I believe the
4 cowboys of the Powder River country and the loggers of the
5 Kootenai and, I hope, the twenty-four licensed attorneys will
6 accept this.

7 CHAIRMAN GRAYBILL: Well, there's one that would like
8 to discuss it.

9 Mr. Choate.

10 DELEGATE CHOATE: Mr. Chairman, just for the benefit
11 of some of the peons in this assembly, would somebody--perhaps
12 the chairman of the committee or maybe the Chair--explain the
13 meaning of the word, ex post facto law?

14 CHAIRMAN GRAYBILL: Well, it has nothing to do with
15 what those Powder River cowboys think it means.

16 (Laughter)

17 CHAIRMAN GRAYBILL: Ex post facto means making a law
18 that relates back to a period before the law was passed. In
19 other words, if they passed a law in the next legislature
20 making it a crime to participate in a constitutional conven-
21 tion, that would be an ex post facto law. Is that right, Mr.
22 Johnson?

23 DELEGATE JOHNSON: Mr. Chairman, I believe those cow-
24 boys down there in Powder River country are thoroughly confused.

25 (Laughter)

1 CHAIRMAN GRAYBILL: Is there other discussion of
2 section thirty-one? It means you can't make a law that goes
3 backwards, or behind the time the law was made. All right,
4 members of the committee, you've had before you the recommend-
5 ation of Mr. James that when this body does arise and report,
6 after having had under consideration section thirty-one, that
7 we recommend it be adopted. All in favor say Aye.

8 DELEGATES: Aye.

9 CHAIRMAN GRAYBILL: Opposed?

10 DELEGATES: (No audible response)

11 CHAIRMAN GRAYBILL: It's adopted. Section thirty-
12 two.

13 CLERK SMITH: (Reading) Section thirty-two, Civilian
14 Control of the Military: The military shall always be in
15 strict subordination to the civil power. No soldier shall in
16 time of peace be quartered in any house without the consent
17 of the owner, nor in time of war, except in the manner pre-
18 scribed by law. (End reading) Section thirty-two, Mr. Chair-
19 man.

20 CHAIRMAN GRAYBILL: Mr. Hanson.

21 DELEGATE R. S. HANSON: Mr. Chairman, I move that
22 when this committee does rise and report, after having had
23 under consideration section thirty-two of proposal number
24 eight, it recommends that the same be adopted. The committee
25 voted unanimously to retain this former article three, section

1 twenty-two as unchanged. In doing so, the committee notes the
2 importance of the declaration of principle that the civilian
3 authority always supersedes that of the military. Although
4 the quartering of troops prohibition has not been at issue in
5 many years, the committee felt it was wise to retain the safe-
6 guard. No delegate proposals were received on this provision.

7 CHAIRMAN GRAYBILL: Is there any discussion of sec-
8 tion thirty-two?

9 Mrs. Bugbee.

10 DELEGATE BUGBEE: I'd just like to ask why the com-
11 mittee felt it was wise to retain that safeguard of quartering
12 and -- it doesn't make any sense to me.

13 CHAIRMAN GRAYBILL: Mr. Hanson.

14 DELEGATE R. S. HANSON: Well, I think the committee
15 felt they didn't want to take any of the rights away from the
16 people and say that we had deleted something from the Bill of
17 Rights. Now, I don't know why they probably put it in the one
18 in 1889, but as long as it was there they just continued to
19 keep it in this present Constitution.

20 CHAIRMAN GRAYBILL: Mrs. Bugbee.

21 DELEGATE BUGBEE: Maybe Mr. Dahood would answer that.

22 CHAIRMAN GRAYBILL: Mr. Dahood, the question is, why
23 do you keep, no soldier shall in time of peace be quartered in
24 any house?

25 DELEGATE DAHOOD: Well, simply because this is a

1 right the people have at the present time. We do have such
2 thing as a national guard. We can have a militia. We've had
3 situations involving a riot at the state penitentiary where
4 some well-meaning individual with military power and control
5 may want to do something. We merely want to indicate that as
6 far as the people of Montana are concerned, they want that par-
7 ticular protection and are going to insist upon it and will
8 continue to do so.

9 CHAIRMAN GRAYBILL: Mr. Rollins.

10 DELEGATE ROLLINS: Mr. Chairman, I'd like to ask --

11 CHAIRMAN GRAYBILL: (Gaveling for quiet) Mr. Rollins
12 has the floor.

13 DELEGATE ROLLINS: I'd like to ask Mr. Dahood a ques-
14 tion, please.

15 CHAIRMAN GRAYBILL: Mr. Dahood.

16 DELEGATE DAHOOD: I yield.

17 DELEGATE ROLLINS: Mr. Dahood, under what circum-
18 stances could martial law be declared in the state of Montana?

19 DELEGATE DAHOOD: Under what circumstances?

20 DELEGATE ROLLINS: Yes.

21 DELEGATE DAHOOD: I would suppose under some type of
22 state or national emergency.

23 DELEGATE ROLLINS: And if that occurred, would the
24 civilian be superior to the military?

25 DELEGATE DAHOOD: Would the civilian be superior to

1 the military? I would hope with respect to this particular
2 right, yes, about the quartering of soldiers.

3 DELEGATE ROLLINS: How about the first part of the
4 statement. It said that the military would always be in strict
5 subordination to the civil power. Would this prevent the de-
6 clARATION of martial law?

7 DELEGATE DAHOOD: No, it would not.

8 DELEGATE ROLLINS: Thank you.

9 CHAIRMAN GRAYBILL: Mr. Rollins, the governor would
10 always be in charge theoretically.

11 Mrs. Bugbee.

12 DELEGATE BUGBEE: Mr. Chairman, I'd like to amend
13 that we put a period in after power and delete the rest of the
14 --

15 CHAIRMAN GRAYBILL: Mrs. Bugbee, you write that
16 amendment up now and send it up to me.

17 (Amendment delivered to the Chair.)

18 CHAIRMAN GRAYBILL: Mrs. Bugbee has proposed an amend-
19 ment to section thirty-two which would place a period after the
20 word, power, so the section would read: The military shall
21 always be in strict subordination to the civil power. She
22 would then strike: No soldier shall in time of peace be quar-
23 tered in any house without the consent of the owner, nor in
24 time of war, except in the manner prescribed by law.

25 Mrs. Bugbee.

1 DELEGATE BUGBEE: Mr. Chairman, if it has had no use
2 in the past Constitution, I don't understand why it needs to
3 be kept and that's why I think it should be deleted. If no
4 one can defend it, I don't see why we should keep it.

5 CHAIRMAN GRAYBILL: Mrs. Cross.

6 DELEGATE CROSS: Mr. Chairman, in the big blue and
7 white book, Bill of Rights, page ninety-one, you'll find an
8 explanation of why this is kept. It goes back to the American
9 Revolution and it was one of the principles that was very im-
10 portant at that time. I'd like to quote some of this material.
11 (Reading) Nearly every state constitution has a provision pro-
12 hibiting the quartering of troops in private dwellings. The
13 principle was expressed as a complaint in the English petition
14 of right of 1628 -- and they quote that. I'd also like to read
15 further. It says: The principle of no quartering of troops
16 is now well established and seems to be of little relevance
17 today; however, the enunciation of such a principle is a sign
18 of the pervasive Colonial mistrust of the military and the
19 colonists' desire to prevent the potential abuses with which
20 they knew standing armies threatened society. In 1765, Gen-
21 eral Gage secured the passage of a quartering act to aid him
22 in the enforcement of the Stamp Act and the Revenue Act of 1764.
23 (End reading) Well, maybe it won't happen again, but there's
24 your history.

25 CHAIRMAN GRAYBILL: Is there further discussion?

1 Mr. Dahood.

2 DELEGATE DAHOOD: Mr. Chairman, on behalf of the Bill
3 of Rights Committee, I oppose the amendment. As a practical
4 point, I don't expect that this is ever going to happen but
5 it's a protection that the people have. They have had it tra-
6 ditionally and they have had it historically. It could serve
7 some purpose. There could be some violation of that right
8 under some unique emergent circumstance that can happen, prob-
9 ably will not, but the people are entitled to have that. We
10 took the position on our Bill of Rights Committee that we were
11 not going to take away any of the rights of the people unless
12 there was some overriding reason as to why there ought to be
13 some change, some modification, or why the particular provis-
14 ion should be taken away. The people sent us here to protect
15 their rights and to expand upon them where a reason required
16 it and we submit that striking that last portion of section
17 thirty-two serves no useful purpose, and there is a useful
18 purpose to be served by retaining it. I oppose the amendment.

19 CHAIRMAN GRAYBILL: Mr. Burkhardt.

20 DELEGATE BURKHARDT: I guess I could talk to Daphne
21 without getting to the microphone, but I've just been reading
22 the story of the San Francisco earthquake recently and there
23 were some strange things that happened in the midst of that,
24 and I would remind her that we are sitting on an earthquake
25 fault right here in Helena, and there may be reason to keep

1 such a provision in our Constitution.

2 CHAIRMAN GRAYBILL: Mr. McNeil.

3 DELEGATE McNEIL: Mr. Chairman, if the National Guard
4 on maneuvers in the vicinity of Missoula are quartered in
5 Daphne's house without her consent, perhaps the meaning of that
6 would be more clear.

7 (Laughter)

8 CHAIRMAN GRAYBILL: I think, Mr. McNeil, the point
9 is that it can't be without her consent.

10 (Laughter)

11 CHAIRMAN GRAYBILL: Perhaps the Chair should stay out
12 of the argument. Is there other discussion?

13 Mr. Harper.

14 DELEGATE HARPER: I'd just like to comment, Mr.
15 Chairman, that they'd better not try to quarter anybody in
16 Rachael Mansfield's grandmother's house.

17 (Laughter)

18 CHAIRMAN GRAYBILL: Very well, members of the commit-
19 tee, you have before you Mrs. Bugbee's amendment. So many as
20 shall be in favor of her amendment to put a period after power
21 and strike the quartering act, say Aye.

22 DELEGATES: Aye.

23 CHAIRMAN GRAYBILL: Opposed, No.

24 DELEGATES: No.

25 CHAIRMAN GRAYBILL: The motion is defeated. Are there

1 other discussion of section thirty-two?

2 (No response)

3 CHAIRMAN GRAYBILL: Members of the committee, you
4 have before you, on the recommendation of Mr. Hanson that when
5 this committee does arise and report, after having had under
6 consideration section thirty-two, that we recommend it be
7 adopted. All in favor say Aye.

8 DELEGATES: Aye.

9 CHAIRMAN GRAYBILL: Opposed, No.

10 DELEGATES: (No audible response)

11 CHAIRMAN GRAYBILL: The Ayes have it and it's adopt-
12 ed. Section thirty-three, Mr. Clerk.

13 CLERK SMITH: (Reading) Section thirty-three, Im-
14 portation of Armed Persons: No armed person or persons or
15 armed body of men shall be brought into this state for the
16 preservation of peace, or the suppression of domestic violence,
17 except upon application of the legislative assembly, or of the
18 governor when the legislative assembly cannot be convened.

19 (End reading) Section thirty-three, Mr. Chairman.

20 CHAIRMAN GRAYBILL: Mr. Foster.

21 DELEGATE FOSTER: Mr. Chairman, I move that when
22 this committee does arise and report, after having had under
23 consideration section thirty-three of the Bill of Rights
24 proposal number eight, it recommends that the same be adopted.

25 Mr. Chairman.

1 CHAIRMAN GRAYBILL: Mr. Foster.

2 DELEGATE FOSTER: Article three, section thirty-one

3 remains unchanged. The protection, initially established to

4 prevent the importation of strike-breakers, is thought to be

5 an adequate safeguard against any body of armed men coming

6 into the state. No delegate proposals were received on this

7 provision. This particular section was reviewed in somewhat

8 similar light as the one previous to it. The thinking of the

9 committee on this question was the same. It does have some

10 history to it and there is a possibility that in the case of

11 an unruly situation that someone might be inclined to bring

12 armed men into the state, and we felt that it was a good safe-

13 guard and the committee felt it was important that this be

14 retained as a safeguard to the people of the state of Montana.

15 Thank you, Mr. President.

16 CHAIRMAN GRAYBILL: Is there discussion?

17 (No response)

18 CHAIRMAN GRAYBILL: Members of the committee, you

19 have before you on Mr. Foster's recommendation that section

20 thirty-three be adopted. All in favor say Aye.

21 DELEGATES: Aye.

22 CHAIRMAN GRAYBILL: Opposed, No.

23 DELEGATES: (No audible response)

24 CHAIRMAN GRAYBILL: So ordered. Section thirty-four.

25 CLERK SMITH: (Reading) Section thirty-four, Unenum-

1 erated Rights: The enumeration in this Constitution of certain
2 rights shall not be construed to deny, impair, or disparage
3 others retained by the people. (End reading) Section thirty-
4 four, Mr. Chairman.

5 CHAIRMAN GRAYBILL: Mrs. Eck.

6 DELEGATE ECK: Mr. Chairman, I move that when this
7 committee does arise and report, after having under consider-
8 ation section thirty-four of proposal number eight, that it
9 recommend the same be adopted. Mr. Chairman, this provision
10 is the same as the one we had in our last -- in our present
11 Bill of Rights, section thirty, and it's also contained in the
12 federal Bill of Rights. I think that it is completely self-
13 explanatory. There are rights which are not enumerated which
14 the people of Montana should not be denied. Thank you.

15 CHAIRMAN GRAYBILL: Is there any discussion of sec-
16 tion thirty-four?

17 (No response)

18 CHAIRMAN GRAYBILL: Members of the committee, you
19 have before you on the recommendation of Mrs. Eck, that when
20 this committee does arise and report, after having had under
21 consideration section thirty-four, that we recommend the same
22 be adopted. All in favor say Aye.

23 DELEGATES: Aye.

24 CHAIRMAN GRAYBILL: Opposed, No.

25 DELEGATES: (No audible response)

1 CHAIRMAN GRAYBILL: It's adopted. Members of the
2 committee, we have one new matter. Mr. Campbell, do you want
3 to make your proposal now? Do you want to make this other one
4 or not? Do you want to leave it -- drop it?

5 DELEGATE CAMPBELL: (Inaudible. Microphone not in
6 operation.)

7 CHAIRMAN GRAYBILL: Well, you have on my desk an
8 alternative proposal for the ballot on section twelve. I don't
9 know whether you want it or not.

10 DELEGATE CAMPBELL: I would see if someone was going
11 to move for reconsideration on that matter. If they did move
12 for reconsideration, I would enter that later.

13 CHAIRMAN GRAYBILL: Very well, we have for reconsid-
14 eration one matter, and I understand -- Mr. Studer, my point
15 is, if you want to make a motion to reconsider, do so, but I
16 don't think I can hold the article, so you prepare yourself
17 one way or the other. Mrs. Warden, do you want to take your
18 matter first?

19 Mrs. Warden.

20 DELEGATE WARDEN: Yes, Mr. President. Having voted
21 on the prevailing side, I move to reconsider section twelve
22 of the Bill of Rights article. I voted on the prevailing side
23 and I have had second thoughts on this. This is the right to
24 bear arms. I feel that I would like to suggest that instead
25 of going through all the debate we went through yesterday, that

1 perhaps even a vote on this to put in those nine little words
2 that were taken out yesterday would be in order. I think we
3 know pretty much what the problem is. We've talked about it.
4 We hashed it over for several hours yesterday and I felt that
5 I needed to bring it up today and I would hope that we could
6 have a vote without a great deal of debate. Thank you.

7 CHAIRMAN GRAYBILL: Mr. Rollins.

8 DELEGATE ROLLINS: I've been expecting this, Mr.
9 Chairman, and I don't know whether to call it here we go again,
10 or it seems to me I've heard that song before.

11 (Laughter)

12 DELEGATE ROLLINS: It is another attempt to substi-
13 tute a later action for an action that has already been taken
14 by this Convention. I doubt that much new can be adduced by
15 redebating this. I don't know why certain people would have
16 changed their minds unless they got word back from the folks
17 back home or had a sudden reconversion during the night. I
18 wonder if we discuss this all again -- I have been thinking of
19 titles again -- will we, by reconsidering it, be doing as
20 Longfellow states, doing something in real earnest, or will we
21 be, as Shakespeare suggests, be enacting a tale told by an
22 idiot, full of sound and fury, signifying nothing. I oppose
23 the reconsideration of this motion.

24 CHAIRMAN GRAYBILL: Mr. Kelleher.

25 DELEGATE KELLEHER: Mr. Chairman and fellow Dele-

1 gates, I had a -- I get real emotional on this matter of guns
2 and yesterday I had prepared a two hour speech in support of
3 a motion to delete the entire section, let alone amend it, but
4 I forbore myself yesterday looking at my little sign that says,
5 blessed is the man who, having nothing to say, abstains from
6 giving in words evidence of that fact--said sign having been
7 distributed to us earlier. But I do believe I would be unable
8 to resist the temptation today if this matter were opened up
9 as I was successfully able in resisting the temptation yester-
10 day.

11 (Laughter)

12 CHAIRMAN GRAYBILL: Very well, apparently the issue
13 arises on Mrs. Warden's motion that we reconsider section
14 twelve.

15 Mr. Jacobsen.

16 DELEGATE JACOBSEN: Mr. President, fellow Delegates,
17 I believe that we should reopen this for not too much debate
18 but for the simple reason that there are fifteen to twenty
19 thousand people in the state of Montana that are a little bit
20 emotional about this not being in our Constitution, not being
21 added. And those nine little words certainly won't add much
22 to the document as far as paper is concerned, but it can mean
23 a lot in having a lot of other people concerned and voting for
24 this completed document. Thank you.

25 CHAIRMAN GRAYBILL: Very well, the issue arises on --

1 Mr. Cheate, do you want to debate or do you want to discuss?
2 Go ahead.

3 DELEGATE CHOATE: Only to say I would support the
4 motion to reconsider. I've had about a hundred and fifty let-
5 ters regarding this issue and I would support the motion.

6 CHAIRMAN GRAYBILL: All right now, that seems rep-
7 ititious. The Chair wants to get this going. All those in
8 favor of Mrs. Warden's motion to reconsider -- Mrs. Warden,
9 do you want to close?

10 DELEGATE WARDEN: I want a roll call.

11 CHAIRMAN GRAYBILL: You want a roll call vote. All
12 those in favor of Mrs. Warden's motion to reconsider section
13 twelve, please indicate by voting Aye; those opposed vote No.
14 It takes two-thirds or fifty-one. Has every Delegate voted?

15 (No response)

16 CHAIRMAN GRAYBILL: Does any Delegate wish to change
17 his vote?

18 (No response)

19 CHAIRMAN GRAYBILL: Now, I think the Chair stated
20 that wrong. This is not to suspend the rules, this is to re-
21 consider, so it does not take two-thirds or fifty-one percent.
22 It takes a majority. Does any Delegate wish to change his
23 vote?

24 (No response)

25 CHAIRMAN GRAYBILL: Very well, close the vote and

1	take the tally.				
2	Aasheim	-	Absent	Champoux	- Absent
3	Anderson, J.	-	Aye	Choate	- Aye
4	Anderson, O.	-	Aye	Conover	- Aye
5	Arbanas	-	Nay	Cross	- Nay
6	Arness	-	Nay	Dahood	- Nay
7	Aronow	-	Aye	Davis	- Aye
8	Artz	-	Aye	Delaney	- Aye
9	Ask	-	Aye	Driscoll	- Nay
10	Babcock	-	Aye	Drum	- Aye
11	Barnard	-	Nay	Eck	- Nay
12	Bates	-	Excused	Erdmann	- Aye
13	Belcher	-	Nay	Eskildsen	- Aye
14	Berg	-	Nay	Etchart	- Nay
15	Berthelson	-	Aye	Felt	- Absent
16	Blaylock	-	Nay	Foster	- Nay
17	Blend	-	Aye	Furlong	- Excused
18	Bowman	-	Aye	Garlington	- Aye
19	Brazier	-	Nay	Gysler	- Aye
20	Brown	-	Nay	Habedank	- Aye
21	Bugbee	-	Nay	Hanson, R. S.	- Aye
22	Burkhardt	-	Nay	Hanson, R.	- Absent
23	Cain	-	Aye	Harbaugh	- Nay
24	Campbell	-	Aye	Harlow	- Nay
25	Cate	-	Nay	Harper	- Nay

1	Harrington	-	Nay	Pemberton	-	Aye
2	Heliker	-	Absent	Rebal	-	Aye
3	Holland	-	Absent	Reichert	-	Aye
4	Jacobsen	-	Aye	Robinson	-	Aye
5	James	-	Nay	Roeder	-	Aye
6	Johnson	-	Aye	Rollins	-	Nay
7	Joyce	-	Nay	Romney	-	Nay
8	Kamhoot	-	Aye	Rygg	-	Aye
9	Kelleher	-	Nay	Scanlin	-	Nay
10	Leuthold	-	Aye	Schiltz	-	Nay
11	Loendorf	-	Nay	Siderius	-	Nay
12	Lorello	-	Aye	Simon	-	Aye
13	Mahoney	-	Aye	Skari	-	Aye
14	Mansfield	-	Nay	Sparks	-	Nay
15	Martin	-	Nay	Speer	-	Nay
16	McCarvel	-	Nay	Studer	-	Aye
17	McDonough	-	Nay	Sullivan	-	Nay
18	McKeon	-	Nay	Swanberg	-	Nay
19	McNeil	-	Aye	Toole	-	Nay
20	Melvin	-	Aye	Van Buskirk	-	Aye
21	Monroe	-	Nay	Vermillion	-	Nay
22	Murray	-	Aye	Wagner	-	Nay
23	Noble	-	Aye	Ward	-	Aye
24	Nutting	-	Aye	Warden	-	Aye
25	Payne	-	Nay	Wilson	-	Aye

1 Woodmansey - Aye Mr. Chairman - Nay
2 CLERK SMITH: Mr. Chairman, forty-seven have voted
3 Aye, forty-five have voted No.
4 CHAIRMAN GRAYBILL: Forty-seven having voted Aye,
5 forty-five having voted No, section twelve is reconsidered.
6 Will the Clerk please read section twelve?
7 CLERK SMITH: (Reading) Section twelve, Right to
8 Bear Arms: The right of any person to keep or bear arms in
9 defense of his home, person and property, or in aid of the
10 civil power when thereto legally summoned, shall not be called
11 in question, but nothing herein contained shall be held to
12 permit the carrying of concealed weapons. (End reading) Sec-
13 tion twelve, Mr. Chairman.
14 CHAIRMAN GRAYBILL: Mrs. Warden.
15 DELEGATE WARDEN: Mr. Chairman, may I put in the
16 same amendment that we had yesterday -- nor shall any person's
17 firearms be registered or licensed? I think it's all in the
18 book. Do you need an extra amendment on it?
19 CHAIRMAN GRAYBILL: Would you read it to me?
20 DELEGATE WARDEN: Nor shall any person's firearms
21 be registered or licensed.
22 CHAIRMAN GRAYBILL: You want to insert that after --
23 at the end?
24 DELEGATE WARDEN: May I ask, Mr. Chairman --
25 CHAIRMAN GRAYBILL: Or do you want to put it after

1 the word, property, is that right? Or where do you put it?
2 No, you put it -- shall not be called in question.

3 DELEGATE WARDEN: -- in question.

4 CHAIRMAN GRAYBILL: All right, on line twenty on
5 page six, section twelve, Mrs. Warden moves to add the words,
6 nor shall any person's firearms be registered or licensed.

7 Mrs. Warden.

8 DELEGATE WARDEN: I would just like to say again I
9 hope that there could be a simple vote on this without a great
10 long bit of debate.

11 CHAIRMAN GRAYBILL: Mr. Kelleher.

12 DELEGATE KELLEHER: Mr. Chairman, I move to delete
13 section twelve, the entire section, of the Bill of Rights Com-
14 mittee proposal.

15 Mr. Chairman.

16 CHAIRMAN GRAYBILL: Just a minute. That's a substi-
17 tute motion?

18 DELEGATE KELLEHER: As a substitute motion, yes, sir.

19 CHAIRMAN GRAYBILL: Mr. Kelleher has now made a
20 motion to delete section twelve in its entirety.

21 Mr. Kelleher.

22 DELEGATE KELLEHER: Mr. Chairman, fellow Delegates.
23 When I was at the -- on active duty last year at the war col-
24 lege in Pennsylvania, a mother calmly walked into a bedroom in
25 Harrisburg, Pennsylvania, and shot -- pumped five slugs into

1 her sixteen-year-old son as he lay in bed. Last week in Massa-
2 chusetts a mother calmly shot three of her children and shot
3 herself. Last summer in Billings, Montana, to get a little
4 closer to home, a twenty-year-old son had a dispute with his
5 father, got the family forty-five and did in the old man. Sev-
6 enty-five percent of the homicides in the United States are
7 with guns -- that are with guns are committed in a fit of tem-
8 per, a fit of passion. The only problem is they may cool off
9 later but the person who has been shot has been cooled off
10 permanently. Seventy-five percent of these homicides with
11 guns are between relatives or friends, people who know each-
12 other. I will not allow loaded weapons in my house, as has
13 been said by some of the members here yesterday. I have
14 stayed active in the Army Reserve for twenty-three years be-
15 cause I feel this is my duty in the field of national defense,
16 and I submit that anybody here or anybody in this state who
17 is very anxious to protect the state of Montana and its land
18 and its people, they can either join the National Guard, the
19 Army National Guard or the Air National Guard. I would be very
20 happy personally to swear them into the Army Reserve here in
21 Montana. They are also eligible, you know, to join the Navy
22 Reserve or the Air Force Reserve. If you are really interest-
23 ed in defending your state, I urge you and anybody outside who
24 has been writing you these mimeographed, hectographed letters,
25 that they do likewise. In fact, under our new Constitution,

1 I am very happy to say that females will be able to live in our
2 barracks in the future, and I think that's wonderful. They,
3 too, can bear arms as long as they wear a uniform. I think
4 that's great. I'm all for it. That beats beer in a barracks
5 any day. I just wish I was born twenty years later, that's
6 all. This matter of registration of guns, as far as I'm con-
7 cerned -- I don't care what anybody feels or says about it --
8 I would like to see us register guns. I would like to see very
9 strict controls on hand guns. If you want to belong to a gun
10 association, let the legislature provide for some kind of con-
11 trol of these weapons. You go out to the firing range and you
12 can shoot at paper targets. I just don't like people shooting
13 their kids, that's all -- nor the old man, especially since
14 I've got six kids. Might get mad at me and decide to do in
15 the old man. The only problem with a gun, it's kind of final.
16 Another thing about a gun is, it's very impersonal. If you
17 go after me with a knife at least I've got a chance. You
18 know, I can kick you someplace. Or if you try to poison me,
19 I've got some kind of a chance. Maybe I'll smell the poison
20 in my drink or something. But with a gun you just get away
21 ten or fifteen or twenty feet and you calmly pull the trigger
22 and a little piece of lead comes out and hits me in my brain
23 or my leaden heart or some other lethal place, and does me in.
24 This is what's so vicious about guns. So many guns have been
25 imported into the city of Detroit that it is now known as the

1 murder capitol of the United States and the least little spark,
2 the smallest spark, could set off a rampage between the blacks
3 and the whites in Detroit. Not everybody in Germany, West
4 Germany, carries a gun, or in England or in Norway or Sweden.
5 Why do we have this big hang-up that we've got to have a gun?
6 I submit it's some kind of Freudian insufficiency of some sort.
7 I have the utmost confidence in the sheriffs, in the deputy
8 sheriffs, the highway patrolmen, and in the police of the city
9 of Billings. As far as I'm concerned -- in the county of
10 Yellowstone. As far as I'm concerned, we have the best damned
11 police force in the United States right down in Billings, Mon-
12 tana. We have a superb sheriff's department. When my children
13 were little they very often got lost and the police and the
14 sheriff --

15 CHAIRMAN GRAYBILL: Mr. Kelleher, let's try and stay
16 on the subject. We have a lot of other items to debate this
17 afternoon.

18 DELEGATE KELLEHER: -- they were always successful
19 in finding my children and I have the utmost confidence in
20 them and -- I'm not really going to carry out my threat, Mr.
21 President, you know that. I have the utmost confidence in
22 them and I don't feel I've got to be carrying around -- walking
23 around with a thirty-eight or a forty-five hanging from my
24 hip. It's not necessary. Therefore, Mr. Chairman and my fel-
25 low Delegates, I urge you to strike section twelve, stop making

1 America an armed camp where we settle every dispute like they
2 did in the days of old, in the mining camps of Alder Gulch,
3 with a forty-four. We have courts in Montana -- state courts
4 and federal courts -- and they are there with the help of us
5 grateful and wonderful lawyers to settle any disputes that you
6 have. You don't need to settle your disputes with a gun.
7 Thank you, Mr. Chairman.

8 CHAIRMAN GRAYBILL: Mr. Foster.

9 DELEGATE FOSTER: Mr. President, fellow Delegates,
10 I rise for the first time in support of my Delegate friend,
11 Bob Kelleher. You may think that's surprising because I come
12 from probably as strong a gun country as there is in the state
13 of Montana. Before we got to this question a few of the Dele-
14 gates were discussing it and we felt at that time maybe a mo-
15 tion to delete this whole section might be the appropriate way
16 to view this, because maybe then the people of this state
17 would come to their senses about what we are doing in this par-
18 ticular section. Now, if this body at this particular time
19 would pass this motion, we would not have prevented the right
20 of the citizens of this state to keep and bear arms. The fed-
21 eral Constitution would still allow them to keep and bear arms,
22 so we wouldn't have done anything completely out of the ordin-
23 ary or completely wild, and we could let this thing sit for a
24 while and we could see what the people of Montana think then.
25 And if there is such a big rush for us to not only write the

1 strongest gun control law in the whole United States but in
2 addition to that, legislate into that provision for the Con-
3 stitution the provision that this state shall never register
4 or license guns under any condition in the future, then maybe
5 we could reconsider it if it was all that important, and we
6 could come back to a reasonable position which we found that
7 the committee on the Bill of Rights took in the first place.
8 Now, maybe that's begging the point but I don't think it really
9 is because these right-to-bear-arms, I'll call them for elo-
10 quence or something, are really not satisfied with the strong-
11 est provision in the Constitution of any state in the Union.
12 We gave them that and maybe we gave it to them too easily, and
13 I submit that if we delete this section, sit overnight, let
14 them know where this Convention stands in our own minds, then
15 maybe they'll be happy with the strongest protection of any
16 state in the Union. This is an important issue, this guns.
17 We talked about capital punishment. We were all extremely
18 concerned about one man being killed by the state and very well
19 intended that we should be, but now we're putting a provision
20 in the Constitution that ties the hands of the state in the
21 future to in any way control guns under any circumstances, and
22 I support the position of Delegate Kelleher that at this time
23 that this Convention delete the section.

24 CHAIRMAN GRAYBILL: Mr. Blaylock.

25 DELEGATE BLAYLOCK: Mr. President, I rise to oppose

1 the motion to delete this section and I also oppose Mrs. War-
2 den's motion to change the section as it was submitted by the
3 Bill of Rights Committee's majority report. When I was cam-
4 paigning for the Constitutional Convention, I made a real ef-
5 fort on this section because I knew a lot of the fellows around
6 Laurel, my home town where I have lived for the past fourteen
7 years, were very concerned about this business of the right
8 to keep and bear arms. I went to a number of them and I asked
9 them about this specific section and I showed them how it was
10 in our 1889 Constitution and I said, would you fellows be sat-
11 isfied if we left that as it is? And they said, well, that
12 certainly looks good to us and we'll go with it. This is what
13 we want. We've been happy with this. Let's leave it alone.
14 And as I pointed out yesterday, and I'm not going to repeat
15 all the things I said then, but we had a great deal of -- a
16 great many indications from these different groups who are
17 very, very concerned about this and sincerely so. I don't
18 question their sincerity. But they said the same thing, that
19 they were satisfied with this section. I made that statement
20 yesterday about this being the strongest one of any of the
21 states of the United States. We have preserved that for our
22 people who are concerned about keeping their rifles and shot-
23 guns, and so I say, let's leave it as it is. A few minutes
24 ago, on this business of the death penalty, we heard people
25 giving examples--some of the people who wanted to change this

1 yesterday--talking about policemen getting shot down in the
2 state of Montana and throughout the United States. This is
3 true. We do have our police officers being gunned down and my
4 concern -- and that's why I say there are not just nine little
5 words. That's not all they are. There is this thing that the
6 people of the state of Montana may some day want to take action
7 to stop that kind of thing and I don't believe that we should
8 change this so that the state legislature of the state of Mon-
9 tana cannot do that, so I ask this delegation, this Convention,
10 to accept the majority report as it was given to this Consti-
11 tutional Convention. Thank you.

12 CHAIRMAN GRAYBILL: Mr. Monroe.

13 DELEGATE MONROE: Mr. Chairman, I don't want to be-
14 labor this body with much debate but I was silent on this issue
15 yesterday and I didn't think I need to get up and speak. I
16 didn't think I'd have the opportunity again, either, but I see
17 that I have. I thought our vote yesterday was rather rational.
18 It was closer than I would expect but considering the amount of
19 pressure that was put upon each one of us, I can see why the
20 vote was the way it was. There was a person from my delegation
21 that told the people from my home community that a number of
22 people in my delegation were the ones that defeated the Berthel-
23 son amendment. I was rather offended by that particular report
24 and I guess I differ from some people in my particular delega-
25 tion from my community and county in that respect. I am will-

1 ing to stand on my conviction, as Mr. Romney is. I am willing
2 to go back to my community and get shot out of my saddle. I've
3 been shot before. In 1959 I almost lost my life in a hunting
4 accident, at the ripe young age of thirteen, and I'm willing
5 to get shot again. If they want to bring a thirty-eight right
6 here and put it right at my head, I'll vote the exact same way
7 I did yesterday and I'll vote my conviction, and I'm going to
8 watch everybody, how they vote today and compare it as to how
9 they voted yesterday, and I'll bet you that not one person
10 under the age of forty changes their votes, and anybody that
11 does change their votes is going to be over the age of forty.
12 Thank you.

13 CHAIRMAN GRAYBILL: Mr. Jacobsen.

14 DELEGATE JACOBSEN: Mr. President, fellow Delegates,
15 I have received no threats from any of my constituents, if
16 they didn't have this in the Constitution that they would work
17 against it. However, I think that the number of names that
18 have been sent in to a lot of the Delegates means that a lot
19 of people are concerned about this particular issue because
20 they haven't come just from the Flathead country, they have
21 come from all over the state. Now, the five hundred names
22 that Mr. Blaylock has on this telegram actually were got
23 through a scare tactic. The word got out, or a rumor, stating
24 that the present guns part of the bill, just as we're trying
25 to do now with Mr. Kelleher's motion, would be to take and do

1 away with this and this is what created the five hundred names
2 on this telegram, so they said leave it as is. Now, hand guns
3 are a different story and I believe that proper use of them and
4 the law can take care of that. When President Nixon visited
5 our Flathead last year, his secret service body that were there
6 before, were really concerned because there were trucks and
7 cars and so on parked around that airport and hundreds and
8 hundreds of guns were shown right there in public view. The
9 sheriff was, of course, not concerned but the secret service
10 was and he says, you don't have to worry about those guns--
11 they're out where they can be seen. I also have a very good
12 friend up there in our country that has at least twenty guns.
13 He's a gun nut, as are a lot of people, and he says, by golly,
14 he says, if the United States or the government ever starts to
15 register my guns, I might register one or two of them but, boy,
16 the others will be hidden and this would make crooks out of
17 ninety percent of the gun owners in the state of Montana. I
18 believe we should put those nine words in there and give us
19 another chance of selling this Constitution. Thank you.

20 CHAIRMAN GRAYBILL: Mr. James.

21 DELEGATE JAMES: Mr. President, I resent Delegate
22 Monroe's remarks about the Geritol set.

23 (Laughter)

24 DELEGATE JAMES: We, too, have our principles and
25 we, too, vote our convictions. The thing about this that's

1 bothered me, and I said this before, we're not taking anything
2 away from them, we're not giving them anything. This whole
3 issue is sort of a mirage out in the desert. It's a will-o'-
4 the-wisp that they're following. If registration comes, it
5 will either come from the federal government or from the needs
6 of the state to control crime. Thank you, Mr. President.

7 CHAIRMAN GRAYBILL: Mr. Felt, are you up?

8 Mr. Harlow.

9 DELEGATE HARLOW: The issue has finally surfaced.
10 What is a gun? The Delegate from Flathead just made the re-
11 mark that this registration, or these nine words did not apply
12 to hand guns, so, fellow Delegates, these nine words need not
13 be in there. If the hand guns are dangerous, and one of their
14 advocates just made the remark that this registration did not
15 apply to hand guns, then where are you going to draw the line
16 between a one hand gun and a two hand gun. So, let's not be
17 too wishy-washy. Let's keep those nine words where they were
18 kept all night and for many, many years. We don't need those
19 nine words. Let's remember just what was said, that they
20 cannot -- some guns should be registered and some should not,
21 so let's keep the nine words out. Thank you, Mr. Chairman.

22 CHAIRMAN GRAYBILL: Mr. Barnard.

23 DELEGATE BARNARD: Mr. President, I come from a
24 country that does a lot of hunting and the people have a lot
25 of guns. I haven't received one letter asking for this amend-

1 ment, proposed amendment of Mrs. Warden's to our present Con-
2 stitution. I received numerous letters from many people in
3 the country, asking for this amendment. I've answered many of
4 them asking them why. First I told them how our present Con-
5 stitution read and I said, why do you want this changed? I
6 received not one single answer as to why, so I'm opposed to the
7 motion.

8 CHAIRMAN GRAYBILL: Mr. Delaney.

9 DELEGATE DELANEY: Are we debating the nine words or
10 are we debating Kelleher's amendment?

11 CHAIRMAN GRAYBILL: Well, it's -- the Chair could sit
12 up here and argue with each of you about what you're debating
13 but it's very difficult to determine whether you're debating --
14 you know, if you strike the twelve, I guess you don't get the
15 nine words, so one side of the coin is one and one side is the
16 other. So, my inclination is to let you all talk yourselves
17 out. When you're all through, we'll vote on all these issues.
18 And we've got several others on the Bill of Rights so we'll
19 continue to work when we're through, so go right ahead--have
20 at it.

21 Mr. Harbaugh:

22 DELEGATE HARBAUGH: (Inaudible. Microphone not in
23 operation.)

24 CHAIRMAN GRAYBILL: We are not ready to vote yet un-
25 less somebody else doesn't want to talk. Very well, now, the

1 issue is on Mr. --

2 DELEGATE KELLEHER: Mr. Chairman, can I close?

3 CHAIRMAN GRAYBILL: You betcha, Mr. Kelleher.

4 DELEGATE KELLEHER: Thank you, Mr. Chairman. I just
5 wish, my fellow Delegates -- this is just like the preacher
6 talking to the congregation, bawling them out for the people
7 that aren't there in church on Sunday -- but I just wish we
8 had as much interest in whether we elected our judges or ap-
9 pointed our judges, and whether we had a short ballot or a
10 long ballot. It's very sad that we have to spend so much time
11 on something like this. I do want to say, I don't want to take
12 the guns from the hunters. I know people who give up good jobs
13 to come out here so they can hunt, and I know people in fact in
14 my own community back in Yellowstone, that is the only meat
15 they have is the deer and the antelope that they shoot. But,
16 the only thing that I'm concerned about is the hand guns and
17 I don't want mothers and kids to be able to get the hand guns,
18 that's all. Could I have five seconds?

19 CHAIRMAN GRAYBILL: Yes, we're going to have a roll
20 call vote, Mr. Kelleher. Now, the issue is on Mr. Kelleher's
21 motion to delete section twelve in its entirety. So many as
22 shall be in favor of that, vote Aye; and so many as shall be
23 opposed to that, vote No. Has every Delegate voted?

24 (No response)

25 CHAIRMAN GRAYBILL: Any Delegate that wants to change

1 his vote?

2 (No response)

3 CHAIRMAN GRAYBILL: Take the ballot, please.

4	Aasheim	-	Aye	Campbell	-	Nay
5	Anderson, J.	-	Nay	Cate	-	Nay
6	Anderson, O.	-	Nay	Champoux	-	Nay
7	Arbanas	-	Nay	Choate	-	Nay
8	Arness	-	Nay	Conover	-	Absent
9	Aronow	-	Nay	Cross	-	Aye
10	Artz	-	Nay	Dahood	-	Nay
11	Ask	-	Nay	Davis	-	Nay
12	Babcock	-	Nay	Delaney	-	Nay
13	Barnard	-	Nay	Driscoll	-	Nay
14	Bates	-	Excused	Drum	-	Absent
15	Belcher	-	Nay	Eck	-	Nay
16	Berg	-	Nay	Erdmann	-	Nay
17	Berthelson	-	Nay	Eskildsen	-	Nay
18	Blaylock	-	Nay	Etchart	-	Nay
19	Blend	-	Nay	Felt	-	Nay
20	Bowman	-	Nay	Foster	-	Aye
21	Brazier	-	Nay	Furlong	-	Excused
22	Brown	-	Nay	Garlington	-	Nay
23	Bugbee	-	Nay	Gysler	-	Nay
24	Burkhardt	-	Nay	Habedank	-	Nay
25	Cain	-	Nay	Hanson, R. S.	-	Nay

1	Hanson, R.	-	Absent	Murray	-	Nay
2	Harbaugh	-	Aye	Noble	-	Nay
3	Harlow	-	Aye	Nutting	-	Nay
4	Harper	-	Nay	Payne	-	Nay
5	Harrington	-	Aye	Pemberton	-	Nay
6	Heliker	-	Nay	Rebal	-	Nay
7	Holland	-	Absent	Reichert	-	Nay
8	Hacobsen	-	Nay	Robinson	-	Nay
9	James	-	Absent	Roeder	-	Nay
10	Johnson	-	Nay	Rollins	-	Aye
11	Joyce	-	Nay	Romney	-	Nay
12	Kamhoot	-	Nay	Rygg	-	Nay
13	Kelleher	-	Aye	Scanlin	-	Nay
14	Leuthold	-	Nay	Schiltz	-	Nay
15	Loendorf	-	Absent	Siderius	-	Nay
16	Lorello	-	Nay	Simon	-	Nay
17	Mahoney	-	Nay	Skari	-	Nay
18	Mansfield	-	Aye	Sparks	-	Nay
19	Martin	-	Aye	Speer	-	Nay
20	McCarvel	-	Aye	Studer	-	Aye
21	McDonough	-	Nay	Sullivan	-	Nay
22	McKeon	-	Nay	Swanberg	-	Nay
23	McNeil	-	Nay	Toole	-	Nay
24	Melvin	-	Nay	Van Buskirk	-	Nay
25	Monroe	-	Aye	Vermillion	-	Nay

1 Wagner - Nay Wilson - Nay
2 Ward - Nay Woodmansey - Nay
3 Warden - Nay Mr. Chairman - Nay

4 CLERK SMITH: Mr. Chairman, thirteen have voted
5 Aye, seventy-nine have voted No.

6 CHAIRMAN GRAYBILL: Thirteen having voted Aye,
7 seventy-nine voting No, Mr. Kelleher's motion fails. We are
8 now on Mrs. Warden's motion to add the words, nor shall any
9 person's firearms be registered or licensed, on line nineteen,
10 section twelve, page six.

11 Mr. Scanlin.

12 DELEGATE SCANLIN: Mr. Chairman, I refrained from
13 speaking on this issue yesterday and I'm going to be very
14 brief today. It saddens me to see the false identification of
15 registration with confiscation. This is simply an indication
16 of hysteria on the part of gun people. My youngest son, Steve,
17 is a gun expert. He has earned all the awards available in the
18 junior rifle association and the United States Navy in marks-
19 manship, and my opposition to this amendment is on his behalf.
20 Thank you.

21 CHAIRMAN GRAYBILL: Mr. Romney.

22 DELEGATE ROMNEY: Mr. Chairman, there is not one
23 scintilla of evidence that there was any intention of requir-
24 ing registration of firearms in the majority report. There is
25 no evidence that the legislature would impose that obligation

1 on people like myself who own guns. The history tells us that
2 in the past, in 1918 or 1919, '17, during World War I, there
3 was a registration of firearms in Montana and people turned in
4 their registration at the sheriffs' offices in the various
5 counties of the state. There was never any effort on the part
6 of anybody to sequester those firearms, confiscate them. The
7 history of the movement throughout the United States has never
8 indicated, so far as I can ascertain, any effort on the part of
9 the government to confiscate guns. We have no threat of regis-
10 tration. I think this is a red herring that is being drawn
11 across the trail of the Convention in order to muddy up the
12 issue, and perhaps defeat the Convention. I think we should
13 defeat this motion of Mrs. Warden's and go on with our business.

14 CHAIRMAN GRAYBILL: Mr. Burkhardt.

15 DELEGATE BURKHARDT: Mr. Chairman, everybody gets
16 up and says, I didn't speak yesterday, and I was hoping I
17 wouldn't today on this particular issue. It seems to me that
18 it's been well talked, but it's come to the point where you
19 raise a question of whether you were even present if you aren't
20 on the record on an issue like this, and so, you know, a hun-
21 dred of us are going to get something on the record regarding
22 this and maybe that's all right and the reason we're here. I
23 think we could make emotional statements that would inflame
24 eachother. We tried at both ends of this thing, and I don't
25 propose to do that. I could list how many guns I own. I'm an

1 elk hunter and I have a Chesapeake Bay retriever and on and on,
2 you know how those things can be shared. I was hunting elk on
3 November 22, 1963, and I came home and heard the news of our
4 President having been shot, and I could draw some big emotional
5 thing in terms of that experience for myself. I looked at that
6 telescopic rifle I had been carrying all day and I thought some
7 very deep thoughts about what happens in a society and what
8 happens within each of us at times in terms of selling out to
9 some kind of hysteric or emotional impulse. I think the people
10 of Montana are reasonable enough to know that there are more
11 issues at stake that affect our lives vitally than are guns,
12 and it seems like a cheap way to garner a lot of votes to go
13 with this thing and say, you know, we're going to get them and
14 this is a good way to do it. It doesn't really hurt anything.
15 I see it as an opportunity to salute the intelligence of our
16 people by saying, we do -- we did what we thought was right,
17 wherever it comes out, and really, you know, there were some
18 issues that were more important than what we put in the Con-
19 stitution in regard to our guns. It just seems to me that this
20 promise of a lot of easy votes -- and I can be a practical pol-
21 itician, too -- but our people are smarter than that and I'd
22 like to salute their intelligence and vote the way I did yes-
23 terday, which is to say we have the strongest statement of any
24 Bill of Rights. If we lived in any other state but this one
25 and Alaska, I would be really afraid of that kind of a state-

1 ment in the Bill of Rights, but we have few people and lots of
2 space and so we're relatively safe out there hunting. Most
3 states don't have that option; we still do. But, I'm going to
4 vote the way I did yesterday, and I wanted to be on record.
5 Thank you.

6 CHAIRMAN GRAYBILL: Mr. Johnson.

7 DELEGATE JOHNSON: Mr. Chairman, I rise in support
8 of the amendment. I did yesterday. I feel very sincere about
9 this and that's all I'm going to say except would Mr. Schiltz
10 yield to a question?

11 DELEGATE SCHILTZ: I yield.

12 DELEGATE JOHNSON: Mr. Schiltz, yesterday you im-
13 pressed me very greatly with the knowledge you have of all
14 types of guns, and I never -- I tried to catch you and ask you
15 a question just individually or out in the hall or someplace,
16 but you eluded me all the time, and I know there's other people
17 here concerned in the same area, and I could hardly sleep last
18 night, and I've been so concerned. You said that you could
19 put -- or take those guns apart in the dark but you didn't say
20 whether you could put them back together. Can you?

21 DELEGATE SCHILTZ: Yes, I did and I could.

22 DELEGATE JOHNSON: Thank you, Mr. Chairman.

23 CHAIRMAN GRAYBILL: Mr. Choate.

24 DELEGATE CHOATE: Mr. Chairman, just so we don't
25 cut the debate too short, I wasn't on the record yesterday on

1 my position on this matter. I do support Mrs. Warden's amend-
2 ment, as I supported Mr. Berthelson's amendment yesterday. I
3 don't think it's a red herring if we have letters and indica-
4 tions from the electorate from around the state in the number
5 of thousands, because it will amount to that. I think they
6 have expressed their preference and I think that we are here
7 to do their will, and I support it and I think it will pass.

8 CHAIRMAN GRAYBILL: Very well, the issue arises on
9 Mrs. Warden's motion that we add the words, nor shall any per-
10 son's firearms be registered or licensed, on line twenty, after
11 the word, question, to section twelve.

12 UNIDENTIFIED DELEGATE: Roll call vote.

13 CHAIRMAN GRAYBILL: So many as shall be in favor of
14 that motion, vote Aye on the voting machine; so many as shall
15 be opposed, vote No. Have all the Delegates voted?

16 (No response)

17 CHAIRMAN GRAYBILL: Does any Delegate wish to change
18 his vote?

19 (No response)

20 CHAIRMAN GRAYBILL: For the last time. Very well,
21 take the ballot.

22 Aasheim	-	Nay	Arness	-	Nay
23 Anderson, J.	-	Aye	Aronow	-	Aye
24 Anderson, O.	-	Nay	Artz	-	Aye
25 Arbanas	-	Nay	Ask	-	Aye

1	Babcock	-	Aye	Eck	-	Nay
2	Barnard	-	Nay	Erdmann	-	Aye
3	Bates	-	Excused	Eskildsen	-	Nay
4	Belcher	-	Nay	Etchart	-	Nay
5	Berg	-	Nay	Felt	-	Nay
6	Berthelson	-	Aye	Foster	-	Nay
7	Blaylock	-	Nay	Furlong	-	Excused
8	Blend	-	Aye	Garlington	-	Aye
9	Bowman	-	Nay	Gysler	-	Aye
10	Brazier	-	Nay	Habedank	-	Aye
11	Brown	-	Nay	Hanson, R. S.	-	Aye
12	Bugbee	-	Nay	Hanson, R.	-	Absent
13	Burkhardt	-	Nay	Harbaugh	-	Nay
14	Cain	-	Aye	Harlow	-	Nay
15	Campbell	-	Aye	Harper	-	Nay
16	Cate	-	Nay	Harrington	-	Nay
17	Champoux	-	Aye	Heliker	-	Absent
18	Choate	-	Aye	Holland	-	Absent
19	Conover	-	Absent	Jacobsen	-	Aye
20	Cross	-	Nay	James	-	Nay
21	Dahood	-	Nay	Johnson	-	Aye
22	Davis	-	Aye	Joyce	-	Nay
23	Delaney	-	Aye	Kamhoot	-	Aye
24	Driscoll	-	Nay	Kelleher	-	Nay
25	Drum	-	Absent	Leuthold	-	Nay

1	Loendorf	-	Absent	Romney	-	Nay
2	Lorello	-	Aye	Rygg	-	Aye
3	Mahoney	-	Aye	Scanlin	-	Nay
4	Mansfield	-	Nay	Schiltz	-	Nay
5	Martin	-	Nay	Siderius	-	Nay
6	McCarvel	-	Nay	Simon	-	Aye
7	McDonough	-	Nay	Skari	-	Aye
8	McKeon	-	Nay	Sparks	-	Nay
9	McNeil	-	Aye	Speer	-	Nay
10	Melvin	-	Nay	Studer	-	Aye
11	Monroe	-	Nay	Sullivan	-	Nay
12	Murray	-	Aye	Swanberg	-	Nay
13	Noble	-	Absent	Toole	-	Aye
14	Nutting	-	Aye	Van Buskirk	-	Nay
15	Payne	-	Nay	Vermillion	-	Nay
16	Pemberton	-	Aye	Wagner	-	Nay
17	Rebal	-	Aye	Ward	-	Aye
18	Reichert	-	Aye	Warden	-	Aye
19	Robinson	-	Aye	Wilson	-	Aye
20	Roeder	-	Nay	Woodmansey	-	Aye
21	Rollins	-	Nay	Mr. Chairman	-	Nay

22 CLERK SMITH: Mr. Chairman, thirty-nine have voted
 23 Aye, fifty-two have voted No.

24 CHAIRMAN GRAYBILL: Fifty-two having voted No and
 25 thirty-nine having voted Aye, the motion is defeated. Mr.

1 Jacobsen, you had an amendment -- a section to add. Do you
2 want the Chair to read it?

3 DELEGATE JACOBSEN: Mr. President, I'll hold that
4 until another time in General Government. Thank you.

5 CHAIRMAN GRAYBILL: Mr. McKeon, you have a section
6 here for the Chair. May we read your amendment?

7 DELEGATE McKEON: Yes, please read it, Mr. Chairman.

8 CHAIRMAN GRAYBILL: It will be styled section thirty-
9 five, proposed section thirty-five. Will the Clerk please read
10 proposed section thirty-five?

11 CLERK SMITH: (Reading) Section thirty-five: The
12 people of Montana declare that Montana servicemen, servicewomen
13 and veterans of all wars may be given special considerations as
14 determined by the legislative assembly. (End reading) Mr.
15 Chairman.

16 CHAIRMAN GRAYBILL: Mr. McKeon wants to add a sec-
17 tion thirty-five concerning servicemen, stating that the legis-
18 lature may give special consideration to servicemen and women.

19 Mr. McKeon.

20 DELEGATE McKEON: Mr. Chairman, I move that when
21 this committee does arise and report that it recommend this
22 section do pass. Mr. Chairman, this section is a permissive
23 section to be added to the Bill of Rights, allowing the legis-
24 lature to give special consideration to veterans of wars. Mr.
25 Chairman, there are -- this section was adopted from the North

1 Dakota constitution. Also, Mr. Chairman, I would like to point
2 out that Missouri just very recently adopted by constitutional
3 amendment a section very similar to this. They adopted this
4 by a four to one plurality. I think this exhibits the popu-
5 larity of a section of this nature. Also, I would like to
6 bring to the attention of the committee the fact that there
7 are one hundred thousand veterans in the state of Montana.
8 That, coupled with the fact that a majority of them are married
9 or who have friends and relatives who would be very much in
10 favor of this amendment, I think would give impetus to the
11 Convention to pass something of this nature, perhaps just be-
12 cause of the saleability of it. Mr. Chairman, as you, and I'm
13 sure all the members of the Convention are aware, the war in
14 Viet Nam has created not only a crisis over there but a crisis
15 at home. Our American fighting men and women are returning to
16 our shores and are, as they return, Mr. Chairman, are being
17 faced with serious problems. They many times lack education,
18 lack the employment opportunities, many are wounded, many have
19 become addicted to drugs and things of this nature. I think
20 all of us can agree that the veteran who returns now from Viet
21 Nam is at a great disadvantage when he tries to place himself
22 back in the role of a productive citizen in this country, so
23 I think that we should include a section of this nature in the
24 Bill of Rights to give the legislature an impetus to try and
25 help these individuals who have gone over and given us the risk

1 of their lives to protect our country, and in many occasions
2 to fight a war in which they do not believe. So, Mr. Chairman,
3 without further adieu, I would recommend that this committee
4 do pass it because I think it is important and I think it is
5 very good and I think it will be very helpful to all the people
6 in Montana. Thank you, Mr. Chairman.

7 CHAIRMAN GRAYBILL: Is there discussion?
8 Mr. Lorello.

9 DELEGATE LORELLO: Just a short comment, Mr. Chair-
10 man. There are forty-three veterans, I think, in this group
11 of one hundred. I hope that we can do something for our ser-
12 vicemen and women and veterans. I hope you'll support the
13 motion.

14 CHAIRMAN GRAYBILL: Mr. Cate.

15 DELEGATE CATE: I believe that the war in Viet Nam,
16 the so-called war in Viet Nam, is not a declared war. I think,
17 as your thing reads, you ought to take into consideration an
18 amendment there.

19 CHAIRMAN GRAYBILL: Mr. McKeon, you may have the
20 floor.

21 DELEGATE McKEON: Thank you, Mr. Chairman. Mr.
22 Chairman, I would request permission to amend the proposed
23 section by deleting on the second line the phrase, of all wars.

24 CHAIRMAN GRAYBILL: All in favor of allowing the
25 deletion, say Aye.

1 DELEGATES: Aye.
2 CHAIRMAN GRAYBILL: Opposed, No.
3 DELEGATES: (No audible response)
4 CHAIRMAN GRAYBILL: So ordered. Is there other
5 discussion?
6 (No response)
7 CHAIRMAN GRAYBILL: Mr. McKeon, do you need to
8 close?
9 DELEGATE McKEON: I close, Mr. Chairman.
10 CHAIRMAN GRAYBILL: Very well, the issue arises on
11 Mr. McKeon's motion to add section thirty-five to the Bill of
12 Rights which states: The people of Montana declare that Mon-
13 tana servicemen, servicewomen and veterans may be given special
14 considerations as determined by the legislative assembly. So
15 many as shall be in favor of that motion say Aye.
16 DELEGATES: Aye.
17 CHAIRMAN GRAYBILL: Opposed, No.
18 DELEGATES: No.
19 CHAIRMAN GRAYBILL: The Chair is in doubt. So many
20 as are in favor vote Aye; so many as are opposed, vote No.
21 UNIDENTIFIED DELEGATE: Roll call vote.
22 CHAIRMAN GRAYBILL: Too late. Has every Delegate
23 voted?
24 (No response)
25 CHAIRMAN GRAYBILL: Does any Delegate wish to change

1 his vote?

2 (No response)

3 CHAIRMAN GRAYBILL: Fifty having voted Aye and thirty-
4 nine No, the motion passes, and the section is adopted. Now,
5 Mr. Dahood, I'm afraid we did not put the motion properly and
6 I don't know who did it the other day but may I say that you
7 move that when this committee does arise and report, after
8 having had under consideration section twelve, after having
9 reconsidered it, that it recommend the same be adopted? Will
10 you so move?

11 DELEGATE DAHOOD: I so move, Mr. Chairman.

12 CHAIRMAN GRAYBILL: Very well, all in favor of that
13 motion say Aye.

14 DELEGATES: Aye.

15 CHAIRMAN GRAYBILL: Opposed?

16 DELEGATES: (No audible response)

17 CHAIRMAN GRAYBILL: Section twelve is closed again.
18 Now, we have an amendment from Mr. -- a proposed new section
19 from Mr. Kelleher which I have styled thirty-six and it's the
20 one on alcohol, Mr. Kelleher. May we read it from the Clerk--
21 will the Clerk read number thirty-six, please?

22 CLERK SMITH: (Reading) Mr. Chairman, I move to
23 amend by adding a new section of the Bill of Rights Committee
24 proposal on page eleven, line ten, the following words: Sec-
25 tion thirty-six: Addiction neither to alcohol nor drugs is

1 a crime. Signed, Kelleher. (End reading)
2 CHAIRMAN GRAYBILL: Mr. Kelleher.
3 DELEGATE KELLEHER: Mr. Chairman.
4 CHAIRMAN GRAYBILL: Go ahead.
5 DELEGATE KELLEHER: I'll be very brief, Mr. Chairman
6 and fellow Delegates. You will note that this provides merely
7 that the disease of alcoholism and the disease of drug addic-
8 tion are not crimes. I believe in the case of Power versus
9 Texas it was taken up to the supreme court of the United States
10 and by a five to four decision, the United States supreme court
11 held that being an alcoholic can be a crime. Power, or who-
12 ever the defendant was in that case, was picked up for being
13 an alcoholic ninety-nine times and they thought he might be a
14 good test case, having been picked up for being drunk ninety-
15 nine times, but those nine wise men -- five of them, anyway,
16 decided that alcoholism was not -- was a crime and a man could
17 be put in jail for it. This merely would provide that alco-
18 holism is not a crime. And also drug addiction. Now, this
19 has nothing to do with drug pushing, please not that. I am
20 just as violently opposed to drug pushing as anybody else is
21 but as far as this is -- the person, the individual who has a
22 habit of -- they are actually addicted to narcotics. This is
23 where it has reached, medically, the point of being a disease
24 and I -- this only states that it would not be a crime. In
25 the case of Robinson versus California in 1962, drug addiction

1 -- the supreme court of California struck down addiction as a
2 crime and, briefly, the court said: A California statute makes
3 it a misdemeanor punishable by imprisonment for any person to,
4 quote, be addicted to the use of narcotics, close quote, and
5 in sustaining petitioner's conviction thereunder the California
6 court construed the statute as making the status, in quotes,
7 the status of narcotic addiction a criminal offense for which
8 the offender may be prosecuted, quote, at any time before he
9 reforms, close quote, even though he has never used or pos-
10 sessed any narcotics within the state and has not been guilty
11 of any anti-social behavior. The court held: As so construed
12 and applied the statute inflicts a cruel and unusual punish-
13 ment in violation of the eighth and fourteenth amendments.
14 Regarding the matter of alcohol, an association known as Alco-
15 holics Anonymous was created in 1935. It has a very good re-
16 cord. It has a record of approximately sixty percent cures,
17 but people, to go into A.A., have to do it voluntarily of their
18 own free will and we have found out a long time ago in A.A.,
19 and I'm not ashamed to say I am personally a member of A.A.
20 and have been for some fourteen months because alcoholism is a
21 disease for me, Bob Kelleher. I cannot take that first drink.
22 I do not feel that I am a criminal because I had the disease
23 of alcoholism and that's all this motion, this provision would
24 provide, is that if a person is diseased, has the disease of
25 alcoholism or is addicted to a narcotic, that it is not a

1 crime. The courts would still have control over it. A man
2 would be responsible for any crimes that he has. He would
3 still be -- he would be responsible for any crimes he would
4 commit under the influence of alcohol or any crimes he would
5 commit under the influence of drug addiction. All this would
6 do is provide that the person who is -- that a person would
7 not commit a crime because of the fact of addiction, that's
8 all. Pushing, that's something else. This has nothing to do
9 with that. And the same way with alcoholism. I have been
10 asked, is alcoholism and drug addiction a crime under our
11 present statutes. My understanding, if you are picked up --
12 I know it is a municipal ordinance in Billings and I think
13 most of our communities -- I'll have to bow to some of the
14 other prosecutors here in the other communities -- but I know
15 that being picked up for -- you can be picked up for public
16 drunk and be put in jail, and this would prevent that. The
17 judge could then send you to Warm Springs or refer you to med-
18 ical treatment someplace else.

19 CHAIRMAN GRAYBILL: Mrs. Eck.

20 DELEGATE ECK: Mr. Chairman, I can agree with Mr.
21 Kelleher completely that alcoholism and drug addiction certainly
22 should not be crimes. This was not proposed to our committee
23 as a proposal. I can see no way that we can get into the Con-
24 stitution a listing of what is and what is not a crime in the
25 state of Montana. I think the same thing would apply to his

1 other proposal. We did briefly consider the possibility of
2 including crimes without victims and here again, we decided
3 that this is a matter that has traditionally been left to
4 statute and it is completely not appropriate for a constitu-
5 tional document. Thank you.

6 CHAIRMAN GRAYBILL: Very well, the issue arises on
7 -- Mr. Simon.

8 DELEGATE SIMON: Would Mr. Kelleher yield to a
9 question, please?

10 CHAIRMAN GRAYBILL: Mr. Kelleher, would you yield?

11 DELEGATE KELLEHER: Yes, sir.

12 DELEGATE SIMON: I have been connected for some
13 thirty years with Billings Deaconess Hospital and I was presi-
14 dent for some seventeen years. I'm still connected. We have
15 our problems at the hospital under the insurance acts of mal-
16 practice. We have about a hundred and thirty-five doctors on
17 the staff. I'm not an attorney but I would like to ask Mr.
18 Kelleher if he would answer how and who would establish at
19 what point an individual becomes addicted -- one cigarette of
20 marijuana, one injection of morophine -- and who would estab-
21 lish at what point he is addicted?

22 DELEGATE KELLEHER: The same way, Mr. Simon, as we
23 now determine a man is incompetent -- is declared incompetent.
24 We lawyers and a judge in a courtroom, we bring in a couple of
25 doctors and get medical advice and decide whether you go to

1 Warm Springs or not. That's the only way. It would have to be
2 competent medical testimony, that's all.

3 CHAIRMAN GRAYBILL: Very well, the question arises
4 on Mr. Kelleher's proposal --

5 DELEGATE KELLEHER: Mr. Chairman, could I have five
6 seconds, please, for a roll call?

7 CHAIRMAN GRAYBILL: O.K. The question arises on
8 Mr. Kelleher's motion that section thirty-six--addiction neither
9 to alcohol nor drugs is a crime--be added to the Bill of
10 Rights. So many as are in favor vote Aye, so many as are op-
11 posed vote No. Has every Delegate voted?

12 (No response)

13 CHAIRMAN GRAYBILL: Any Delegate want to change
14 his vote?

15 (No response)

16 CHAIRMAN GRAYBILL: Take the ballot, please.

17 Aasheim	-	Nay	Barnard	-	Nay
18 Anderson, J.	-	Nay	Bates	-	Excused
19 Anderson, O.	-	Nay	Belcher	-	Nay
20 Arbanas	-	Aye	Berg	-	Nay
21 Arness	-	Absent	Berthelson	-	Nay
22 Aronow	-	Aye	Blaylock	-	Nay
23 Artz	-	Aye	Blend	-	Nay
24 Ask	-	Nay	Bowman	-	Nay
25 Babcock	-	Nay	Brazier	-	Nay

1	Brown	-	Nay	Hanson, R. S.	-	Nay
2	Bugbee	-	Nay	Hanson, R.	-	Absent
3	Burkhardt	-	Nay	Harbaugh	-	Aye
4	Cain	-	Nay	Harlow	-	Nay
5	Campbell	-	Absent	Harper	-	Aye
6	Cate	-	Nay	Harrington	-	Nay
7	Champoux	-	Absent	Heliker	-	Aye
8	Choate	-	Nay	Holland	-	Absent
9	Conover	-	Nay	Jacobsen	-	Nay
10	Cross	-	Nay	James	-	Nay
11	Dahood	-	Nay	Johnson	-	Nay
12	Davis	-	Nay	Joyce	-	Nay
13	Delaney	-	Nay	Kamhoot	-	Nay
14	Driscoll	-	Aye	Kelleher	-	Aye
15	Drum	-	Nay	Leuthold	-	Nay
16	Eck	-	Nay	Loendorf	-	Nay
17	Erdmann	-	Nay	Lorello	-	Aye
18	Eskildsen	-	Nay	Mahoney	-	Nay
19	Etchart	-	Absent	Mansfield	-	Nay
20	Felt	-	Aye	Martin	-	Nay
21	Foster	-	Nay	McCarvel	-	Nay
22	Furlong	-	Excused	McDonough	-	Nay
23	Garlington	-	Nay	McKeon	-	Nay
24	Gysler	-	Nay	McNeil	-	Nay
25	Habedank	-	Nay	Melvin	-	Nay

1	Monroe	-	Aye	Simon	-	Nay
2	Murray	-	Nay	Skari	-	Nay
3	Noble	-	Absent	Sparks	-	Nay
4	Nutting	0	Nay	Speer	-	Nay
5	Payne	-	Nay	Studer	-	Nay
6	Pemberton	-	Absent	Sullivan	-	Nay
7	Rebal	-	Aye	Swanberg	-	Nay
8	Reichert	-	Nay	Toole	-	Nay
9	Robinson	-	Nay	Van Buskirk	-	Absent
10	Roeder	-	Aye	Vermillion	-	Aye
11	Rollins	-	Aye	Wagner	-	Nay
12	Romney	-	Nay	Ward	-	Nay
13	Rygg	-	Nay	Warden	-	Nay
14	Scanlin	-	Nay	Wilson	-	Nay
15	Schiltz	-	Nay	Woodmansey	-	Nay
16	Siderius	-	Nay	Mr. Chairman	-	Nay

17 CLERK SMITH: Mr. Chairman, fifteen have voted Aye,
18 seventy-four have voted No.

19 CHAIRMAN GRAYBILL: Very well, seventy-four voting
20 No and fifteen Aye, the motion fails. Will the Clerk please
21 read proposed section thirty-seven by Mr. Kelleher about in-
22 carceration.

23 CLERK SMITH: (Reading) Section thirty-seven: In-
24 carcerated persons lose none of their human or civil rights
25 when convicted of a felony, other than the choice of habitation,

1 the right to vote and to hold public office. No incarcerated
2 person may be placed in solitary confinement. Signed, Kelleher.
3 (End reading)

4 CHAIRMAN GRAYBILL: Mr. Kelleher.

5 DELEGATE KELLEHER: Mr. Chairman, fellow Delegates,
6 there is nobody here, of course, to speak for the people in
7 the penitentiary or in the jails of our state. Once they're
8 convicted, they can't even vote. But this section would merely
9 provide that when they have been convicted of a felony that
10 they would lose only these rights--where they're going to
11 stay, the right to vote and the right to hold public office,
12 and this conforms to what we have already done in the past.
13 I'm concerned about the fact that so many members of the min-
14 ority groups end up in our penitentiaries and in our jails
15 and I just want their rights protected. And the last sentence
16 of this section provides that the penalty of solitary con-
17 finement shall not be given -- authorized at any time, and
18 my reason for that is, it's my opinion it has not yet been
19 declared cruel and unusual punishment by the United States
20 supreme court but that it is, indeed, cruel and unusual pun-
21 ishment, even for a short time. I don't know how many of you
22 have been in jail, other than my brother attorneys -- we've
23 been in jail many times -- but every time that steel door
24 clangs behind me, I ask myself, I wonder if that sheriff is
25 going to let me out of here, and it's a pretty terrible,

1 terrible feeling, and we all know that not too long ago, with-
2 in the past ten years, a young man was placed in solitary over
3 at Deer Lodge and was killed. He was sick and I ask you when
4 you vote on this matter to consider yourself. I know a lot
5 of you are great law and order people and I'm a law and order
6 man or I wouldn't be a lawyer, but consider yourself -- put
7 yourself, when you vote on this, in the jail at Deer Lodge. If
8 you have never been in jail you can imagine what it's like and
9 imagine that you're in solitary confinement and this is not a
10 really big figment of your imagination that perhaps, just per-
11 haps, you don't belong there. Thank you, Mr. Chairman. Could
12 I have a roll call on this, please?

13 CHAIRMAN GRAYBILL: Well, we're going to debate it
14 first.

15 Mr. Johnson.

16 DELEGATE JOHNSON: Mr. Chairman, would Mr. Kelleher
17 yield to a question?

18 CHAIRMAN GRAYBILL: Mr. Kelleher, will you yield?

19 DELEGATE KELLEHER: Yes, Torrey.

20 DELEGATE JOHNSON: Bob, just as a point of clarifi-
21 cation, solitary confinement -- now if you have a person who
22 is very unpopular there and is in danger of bodily injury from
23 some of the other inmates, you'd necessarily have to put him
24 someplace, wouldn't you, to protect him from those people? And
25 how would you call that?

1 DELEGATE KELLEHER: Protective custody. We do that
2 for other ways, too. That would not be prohibited.

3 DELEGATE JOHNSON: I mean, that would be provided
4 for O.K. without --

5 DELEGATE KELLEHER: Yes, I'm glad you asked me that
6 in case this is accepted. That, of course, would be a valid
7 exemption to protect the man for his own physical well being,
8 he could be protected and set aside from the other inmates.
9 That's right.

10 DELEGATE JOHNSON: I see. Thank you. Thank you,
11 Mr. Chairman.

12 CHAIRMAN GRAYBILL: Mr. McNeil.

13 DELEGATE McNEIL: Mr. Chairman, would Delegate Kel-
14 leher yyield to a question?

15 CHAIRMAN GRAYBILL: Mr. Kelleher?

16 DELEGATE KELLEHER: Yes, sir.

17 DELEGATE McNEIL: Bob, in reading your three other
18 proposed amendments, does this mean that an incarcerated person
19 in jail would have a right to drugs, liquor and sex?

20 DELEGATE KELLEHER: Well, how much time can I have
21 on that one?

22 CHAIRMAN GRAYBILL: Well, I'll rule it out of order
23 for you, Mr. Kelleher.

24 DELEGATE KELLEHER: Thanks for the help, Mr. Chair-
25 man.

1 CHAIRMAN GRAYBILL: Mr. Artz.

2 DELEGATE ARTZ: Mr. Chairman, would Delegate Kelleher
3 yield to a question?

4 CHAIRMAN GRAYBILL: Mr. Kelleher?

5 DELEGATE KELLEHER: Mr. Artz.

6 DELEGATE ARTZ: I want to have the record straight.
7 I'm not a lawyer and I don't know exactly what you mean by
8 solitary confinement. Does that mean they have to have room-
9 mates, or can't they put one in a cell by himself?

10 DELEGATE KELLEHER: No, that's a good question.
11 True, what if it's a friendly little town and it's only got
12 one customer in jail. Obviously, he's in solitary confinement,
13 but he's got the company of the sheriff and he can play poker
14 -- stud poker with the sheriff. I'm not talking about that
15 sort of thing. We don't have to provide company for them, no.

16 CHAIRMAN GRAYBILL: Mr. Choate.

17 DELEGATE CHOATE: Mr. Chairman, would Mr. Kelleher
18 yield to a question?

19 CHAIRMAN GRAYBILL: Mr. Kelleher?

20 DELEGATE KELLEHER: Yes, sir.

21 DELEGATE CHOATE: Mr. Kelleher, I'm wondering about,
22 when you say he'll lose none of his human or civil rights ex-
23 cept those specified, what about right of communication and
24 that sort of thing?

25 DELEGATE KELLEHER: I think he should have that

1 sort of right. If we want to censor his mail, that's all right.
2 I'll tell you what I had, frankly, in mind--the human rights is
3 what bothers me. In a penitentiary, and it's a problem in our
4 state -- our state is not as -- our penitentiary is not heavily
5 populated as, say, Sing Sing or someplace like Pennsylvania's.
6 But in the state of Maryland, a young eighteen year old white
7 boy was attacked by twelve other inmates of another race and
8 he was in surgery for twelve hours, and I just want those young
9 men or women -- I don't know what it's like in a ladies' peni-
10 tentiary but I want those people to be protected when they --
11 even when -- though they're in prison, they're human beings
12 and they're not to be treated like dirt. We treat our cattle
13 and our sheep better than we treat human beings in our peni-
14 tentiary, and this would protect their rights. That's all I
15 have intended by this.

16 CHAIRMAN GRAYBILL: Very well, the question arises
17 on Mr. Kelleher's proposed section thirty-seven about incar-
18 ceration of persons, losing their civil rights in jail. So
19 many as shall be in favor of that motion -- did you ask for a
20 roll call on this, Mr. Kelleher?

21 DELEGATE KELLEHER: Yes.

22 CHAIRMAN GRAYBILL: You did?

23 (Laughter)

24 CHAIRMAN GRAYBILL: O.K. So many as shall be in
25 favor vote Aye on the voting machines; so many as are opposed

1 vote No. Have all the Delegates voted?

2 (No response)

3 CHAIRMAN GRAYBILL: Does any Delegate wish to change
4 his vote?

5 (No response)

6 CHAIRMAN GRAYBILL: Please take the vote.

7	Aasheim	-	Nay	Bugbee	-	Nay
8	Anderson, J.	-	Nay	Burkhardt	-	Nay
9	Anderson, O.	-	Nay	Cain	-	Nay
10	Arbanas	-	Aye	Campbell	-	Nay
11	Arness	-	Absent	Cate	-	Aye
12	Aronow	-	Nay	Champoux	-	Absent
13	Artz	-	Nay	Choate	-	Nay
14	Ask	-	Nay	Conover	-	Nay
15	Babcock	-	Nay	Cross	-	Nay
16	Barnard	-	Aye	Dahood	-	Nay
17	Bates	-	Excused	Davis	-	Nay
18	Belcher	-	Nay	Delaney	-	Absent
19	Berg	-	Nay	Driscoll	-	Nay
20	Berthelson	-	Nay	Drum	-	Nay
21	Blaylock	-	Absent	Eck	-	Nay
22	Blend	-	Nay	Erdmann	-	Nay
23	Bowman	-	Nay	Eskildsen	-	Nay
24	Brazier	-	Nay	Etchart	-	Nay
25	Brown	-	Absent	Felt	-	Aye

1	Foster	-	Nay	McCarvel	-	Aye
2	Furlong	-	Excused	McDonough	-	Nay
3	Garlington	-	Nay	McKeon	-	Aye
4	Gysler	-	Nay	McNeil	-	Nay
5	Habedank	-	Absent	Melvin	-	Nay
6	Hanson, R. S.	-	Nay	Monroe	-	Aye
7	Hanson, R.	-	Absent	Murray	-	Nay
8	Harbaugh	-	Aye	Noble	-	Absent
9	Harlow	-	Nay	Nutting	-	Nay
10	Harper	-	Nay	Payne	-	Nay
11	Harrington	-	Nay	Pemberton	-	Absent
12	Heliker	-	Aye	Rebal	-	Nay
13	Holland	-	Absent	Reichert	-	Nay
14	Jacobsen	-	Nay	Robinson	-	Nay
15	James	-	Aye	Roeder	-	Aye
16	Johnson	-	Aye	Rollins	-	Aye
17	Joyce	-	Nay	Romney	-	Nay
18	Kamhoot	-	Nay	Rygg	-	Nay
19	Kelleher	-	Aye	Scanlin	-	Nay
20	Leuthold	-	Nay	Schiltz	-	Nay
21	Loendorf	-	Nay	Siderius	-	Aye
22	Lorello	-	Aye	Simon	-	Nay
23	Mahoney	-	Nay	Skari	-	Nay
24	Mansfield	-	Nay	Sparks	-	Absent
25	Martin	-	Nay	Speer	-	Aye

1	Studer	-	Nay	Wagner	-	Nay
2	Sullivan	-	Absent	Ward	-	Absent
3	Swanberg	-	Nay	Warden	-	Nay
4	Toole	-	Nay	Wilson	-	Nay
5	Van Buskirk	-	Absent	Woodmansey	-	Nay
6	Vermillion	-	Aye	Mr. Chairman	-	Nay

7 CLERK SMITH: Mr. Chairman, eighteen have voted
8 Aye, sixty-six have voted No.

9 CHAIRMAN GRAYBILL: Sixty-six having voted No and
10 eighteen Aye, the motion fails. Mr. Kelleher, we'll read
11 number thirty-eight now.

12 CLERK SMITH: (Reading) Section thirty-eight:
13 Private sexual acts between consenting adults do not constitute
14 a crime. (End reading) Section thirty-eight, Mr. Chairman.

15 CHAIRMAN GRAYBILL: Mr. Kelleher has proposed a
16 section thirty-eight to read: Private sexual acts between
17 consenting adults do not constitute a crime.

18 Mr. Kelleher.

19 DELEGATE KELLEHER: Mr. Chairman, a typographical
20 error omitted the word, private. The adjective should be in
21 front of sexual acts. I just don't want any off-Broadway plays
22 down on Twenty-Seventh Street in Billings. So, the word, pri-
23 vate, should be added at the beginning. Our present sodomy
24 statute provides that every person who is guilty of the infam-
25 ous crime against nature committed with mankind or any animals

1 punishable by imprisonment in the state prison not less than
2 five years. In other words, you can get life imprisonment
3 under our present statute, and our court has held that this
4 is not only a difficult case -- an easy case to charge a per-
5 son with, but there is as a result of intense prejudice natur-
6 ally you vote by such a charge or convict -- convicting upon
7 slight evidence since the charge is easily made, hard to prove
8 and still harder to disprove. The state of Texas has now
9 declared this type of statute, at least for married couples,
10 as unconstitutional and I'm not going to go through that de-
11 cision as I planned because of the lateness of the hour, and
12 this is my last amendment, I assure you -- the last one for
13 the day.

14 (Laughter)

15 CHAIRMAN GRAYBILL: Wait a minute, Mr. Kelleher,
16 we've got you on the record on that first statement.

17 (Laughter)

18 DELEGATE KELLEHER: It's primarily concerned to
19 handle the problems of homosexuality which, again, is a physi-
20 cal-mental disease, and I'm not a doctor -- I'm having enough
21 trouble practicing law with a license without trying to prac-
22 tice medicine without one, but this is a very serious problem
23 today and this, once again, where competent medical authority
24 has declared that somebody is a homosexual that that's what
25 it's primarily aimed at, that these people would not be put in

1 jail for having a disease. Thank you, Mr. Chairman. Could I
2 have a roll call on this? It's the last one?

3 CHAIRMAN GRAYBILL: You've only got two seconds so
4 far, Mr. Kelleher.

5 (Laughter)

6 CHAIRMAN GRAYBILL: O.K., is there debate or dis-
7 cussion?

8 (No response)

9 CHAIRMAN GRAYBILL: Very well, the issue arises on
10 Mr. Kelleher's section thirty-eight which would add a section
11 to the Bill of Rights that private sexual acts between consent-
12 ing adults do not constitute a crime. So many as are in favor
13 of that, vote Aye; so many as are opposed, vote No. Have all
14 the Delegates voted?

15 (No response)

16 CHAIRMAN GRAYBILL: Does any Delegate wish to
17 change his vote?

18 (No response)

19 CHAIRMAN GRAYBILL: Will you please take the ballot.

20	Aasheim	-	Nay	Artz	-	Nay
21	Anderson, J.	-	Nay	Ask	-	Nay
22	Anderson, O.	-	Nay	Babcock	-	Nay
23	Arbanas	-	Aye	Barnard	-	Nay
24	Arness	-	Absent	Bates	-	Excused
25	Aronow	-	Nay	Belcher	-	Nay

1	Berg	-	Nay	Felt	-	Aye
2	Berthelson	-	Nay	Foster	-	Nay
3	Blaylock	-	Nay	Furlong	-	Excused
4	Blend	-	Nay	Garlington	-	Nay
5	Bowman	-	Nay	Gysler	-	Nay
6	Brazier	-	Nay	Habedank	-	Aye
7	Brown	-	Absent	Hanson, R. S.	-	Nay
8	Bugbee	-	Nay	Hanson, R.	-	Absent
9	Burkhardt	-	Nay	Harbaugh	-	Nay
10	Cain	-	Nay	Harlow	-	Nay
11	Campbell	-	Aye	Harper	-	Nay
12	Cate	-	Aye	Harrington	-	Nay
13	Champoux	-	Absent	Heliker	-	Aye
14	Choate	-	Absent	Holland	-	Nay
15	Conover	-	Nay	Jacobsen	-	Aye
16	Cross	-	Absent	James	-	Absent
17	Dahood	-	Nay	Johnson	-	Nay
18	Davis	-	Nay	Joyce	-	Nay
19	Delaney	-	Absent	Kamhoot	-	Nay
20	Driscoll	-	Nay	Kelleher	-	Aye
21	Drum	-	Nay	Leuthold	-	Nay
22	Eck	-	Nay	Loendorf	-	Nay
23	Erdmann	-	Nay	Lorello	-	Aye
24	Eskildsen	-	Nay	Mahoney	-	Nay
25	Etchart	-	Nay	Mansfield	-	Nay

1	Martin	-	Nay	Scanlin	-	Nay
2	McCarvel	-	Nay	Schiltz	-	Nay
3	McDonough	-	Nay	Siderius	-	Aye
4	McKeon	-	Nay	Simon	-	Nay
5	McNeil	-	Nay	Skari	-	Nay
6	Melvin	-	Nay	Sparks	-	Absent
7	Monroe	-	Aye	Speer	-	Aye
8	Murray	-	Nay	Studer	-	Nay
9	Noble	-	Absent	Sullivan	-	Nay
10	Nutting	-	Nay	Swanberg	-	Nay
11	Payne	-	Nay	Toole	-	Nay
12	Pemberton	-	Absent	Van Buskirk	-	Absent
13	Rebala	-	Nay	Vermillion	-	Nay
14	Reichert	-	Aye	Wagner	-	Nay
15	Robinson	-	Aye	Ward	-	Absent
16	Roeder	-	Aye	Warden	-	Nay
17	Rollins	-	Aye	Wilson	-	Nay
18	Romney	-	Nay	Woodmansey	-	Nay
19	Rygg	-	Nay	Mr. Chairman	-	Nay

20 CHAIRMAN GRAYBILL: No photographs, please.

21 Mr. Cate.

22 DELEGATE CATE: I don't want any inference drawn
23 that Mr. Campbell and I voted together.

24 (Laughter)

25 CHAIRMAN GRAYBILL: Will the Clerk please announce

1 the vote?

2 CLERK SMITH: Mr. Clerk, sixteen have voted Aye;
3 sixty-nine have voted No.

4 CHAIRMAN GRAYBILL: Sixty-nine people having voted
5 No and sixteen voting Aye, the amendment fails. Mr. Harper,
6 may we read your proposal?

7 CLERK HANSON: (Reading) Mr. Chairman, having
8 voted on the prevailing side, I move to reconsider section
9 ten, as amended, of the Bill of Rights Committee proposal
10 number eight. Signed, Harper. (End reading)

11 DELEGATE HARPER: Mr. Chairman.

12 CHAIRMAN GRAYBILL: Mr. Harper has proposed to re-
13 consider section ten. Mr. Harper--on the issue of reconsider-
14 ation.

15 DELEGATE HARPER: It's going to be hard for Dele-
16 gate Ask to follow that act of Kelleher, but he asked me,
17 since I voted on the prevailing side, if I would make this
18 motion and I do, and I now ask for reasons of reconsideration,
19 I yield to Delegate Ask.

20 CHAIRMAN GRAYBILL: Mr. Ask.

21 DELEGATE ASK: Mr. Chairman. Thank you, Delegate
22 Harper, for making the motion to reconsider. We had section
23 ten under consideration the other evening and maybe we acted
24 rather hastily. I like the section but I -- if you'll all re-
25 call, and turn to section ten, we deleted the last phrase,

1 without the showing of a compelling state interest, and this
2 went through rather hurriedly and I got to considering that
3 and became concerned about it, and I've talked to other attor-
4 neys here who are also concerned, and I have also talked to
5 the members of the Bill of Rights. We maybe disagree on inter-
6 pretation, but I think we should reconsider this section, not
7 deleting it but putting back in the verbiage that the majority
8 proposal proposes here. The reason I say this is, the right
9 of privacy has come down through the years by a case law, the
10 U. S. supreme court and our supreme court, and they go on the
11 idea of what's reasonable, the privacy that's justifiable as
12 in regard to the state, and I think that when we have the word-
13 ing here that we presently have in section ten the way we ad-
14 opted it, it says: The right of individual privacy is essen-
15 tial to the well-being of a free society and shall not be in-
16 fringed. So, we're making this absolute now and I don't think
17 there's hardly any opening for a court interpretation of this.
18 At least, this is my view of it. I also contacted the attorney
19 general's office on that. They didn't want to become involved
20 in anything on the Convention but I requested them, I was a
21 Delegate, I felt that being in law enforcement this would con-
22 cern them and they feel that the wording of this section is
23 rather strong and it cannot be infringed and it could stop
24 everything, and they didn't know how it would be interpreted
25 by the court. Now, I also called Professor Elison -- I believe

1 Mr. Campbell has talked to him on the phone -- and he indicated
2 that he had looked at this section the way the majority pro-
3 posal had it and he was satisfied with it and thought it should
4 be in the Constitution. I talked to him today and posed the
5 question of how this would be interpreted. This is a -- we
6 have now made it an absolute right. Just like religion, we
7 can't interfere with religion by any statute whatsoever. No
8 one can do anything about it and it's in the Constitution, and
9 he said, well, he said, I don't know for sure how the court
10 would interpret that, whether they'd interpret it with section
11 eleven, I don't know how. Now, I don't know how, either but
12 are we going to put something into the Constitution that we
13 don't know how the courts are going to interpret it? Shouldn't
14 we put something in there that's clear? And I submit we don't
15 have absolute complete right of privacy in all phases. The
16 U. S. supreme court doesn't feel that way and certainly when
17 there is a compelling state interest, they can invade privacy.
18 Now, I don't know what we're doing here but I think the major-
19 ity proposal is right, that we should leave those words in
20 there, and if you'll read their comments on the next page, they
21 are showing the reasons for this section and how flexible, how
22 it's going to work. By putting these words in, we are giving
23 direction to the court on how they are going to interpret this.
24 If there's no compelling state interest, you can't invade a
25 person's right of privacy, and this is going to have to be

1 shown and this is the direction to the court, and I submit that
2 we should reconsider this section and put the original wording
3 in of the majority of the committee proposed so we clarify this
4 issue and don't cloud it up and create a legal hassle in the
5 years to come. Thank you, Mr. Chairman.

6 CHAIRMAN GRAYBILL: Mr. Campbell.

7 DELEGATE CAMPBELL: Mr. Chairman --

8 CHAIRMAN GRAYBILL: This is on the issue of re-
9 consideration.

10 DELEGATE CAMPBELL: Right. I opposed the motion for
11 reconsideration in this matter. The right of privacy is a
12 right that has been established for some time. I'd like to
13 quote you out of a federal case just briefly, in Connecticut.
14 The right was first suggested by the famous Warren and Brandeis
15 article in the Harvard Law Review in 1890. There are twenty-
16 two American states which have recognized the right as part of
17 their common law. In recent years the trend has been especi-
18 ally pronounced. Law review support is practically unanimous.
19 Since 1936, no court in any state has denied the right. As
20 recently as 1952, this federal case goes on, Illinois and Mon-
21 tana adopted the right by express holding and with no misgiv-
22 ings. I submit to you that we do have in Montana a supreme
23 court case which does hold that the right of privacy is em-
24 braced within the absolute rights of personal security and per-
25 sonal liberty. The basis of the right of privacy is the right

1 to be let alone and is part of the right to liberty and pursuit
2 of happiness, and they quote cases. I suggest to you that the
3 supreme court is not going to be bound on this. They certainly
4 are going to interpret the right of privacy. We had much dis-
5 cussion before our committee and why not try to define the right
6 to put in specific examples, but it was our feeling that once
7 you do that, you are running a risk that you may eliminate
8 others areas in the future which may be developed by the court.
9 As you have seen in the Montana Standard, they feel this right
10 is a right that should have express protection in the Consti-
11 tution. I think that the words that were deleted did not add
12 anything. The court, when interpreting this, will of course
13 interpret this to mean there must be some limitations. It's
14 not absolute. They have interpreted this in the past on what
15 this is. I feel that it will be interpreted properly in the
16 future, and I think that once we get into this we could open
17 up the entire area that our committee spent many, many hours
18 considering, and I feel that it is proper the way we amended
19 it and I would oppose this reconsideration. Thank you.

20 CHAIRMAN GRAYBILL: Very well, the issue arises on
21 -- Mr. Ask, yes.

22 DELEGATE ASK: I would like to close on that. Mr.
23 Campbell mentioned that this is recognized in so many states.
24 I agree the federal government recognizes it, but they do not
25 recognize it as an absolute right like we have written it into

1 this section here. I think we're creating problems. I'm not
2 against the right of privacy, but I think we're creating more
3 legal problems if we don't give some direction, and these cases
4 don't hold that this right of privacy is absolute. They all go
5 by what's reasonable and what's justifiable. Now, there's the
6 latest United States case, United States versus White; it was
7 decided April 5, 1971, and in there it was quoted: Our problem
8 in terms of principles, as announced in Katz, which was a pre-
9 vious case, is what expectations of privacy are constitutionally
10 justifiable, what expectations the fourth amendment will pro-
11 tect in the absence of warrant. So they're under the fourth
12 amendment. There's nothing in the federal Constitution that
13 gives this right of privacy. They've interpreted it from the
14 fourth amendment. Then going on, it says: Particularly under
15 the fourth amendment, which is ruled by fluid concepts of
16 reasonableness -- so you have to, when they interpret this
17 section, you have to go to whether it's justifiable and the
18 reasonableness of it, and I think if we add the remainder of
19 this section ten that the majority committee came out with for
20 our proposal, that we will be going in that direction and we
21 will avoid a lot of misunderstanding of this section, mis-
22 interpretation. Thank you.

23 CHAIRMAN GRAYBILL: Very well, the question arises
24 on Mr. Harper's motion that we reconsider section ten. You
25 have heard the discussion. All in favor of reconsidering

1 section ten, say Aye.

2 DELEGATES: Aye.

3 CHAIRMAN GRAYBILL: Opposed, No.

4 DELEGATES: No.

5 CHAIRMAN GRAYBILL: The Chair is in doubt. All in
6 favor of reconsidering, say Aye, and all opposed say No. Have
7 all the Delegates voted?

8 (No response)

9 CHAIRMAN GRAYBILL: Does any Delegate wish to change
10 his vote?

11 (No response)

12 CHAIRMAN GRAYBILL: Fifty-six having voted Aye and
13 thirty-three having voted No, we will reconsider section ten.

14 Mr. Ask.

15 DELEGATE ASK: Mr. Chairman, I move that we adopt
16 section ten, the right of privacy, in the full wording as pro-
17 posed by the committee in the majority proposal. It's on page
18 twenty-three, with the word, individual, included in the amend-
19 ment, and include the entire wording of that section and I have
20 given the reasons before and I will not belabor the point.
21 Thank you.

22 CHAIRMAN GRAYBILL: Mr. Dahood.

23 DELEGATE DAHOOD: Mr. Chairman, the Bill of Rights
24 Committee has no objection. In the final analysis, I don't
25 think the fears that have been expressed are valid, but never-

1 theless, we have no objection to adding that particular clause
2 so that the right will read as originally submitted to this
3 body.

4 CHAIRMAN GRAYBILL: Mr. Harper.

5 DELEGATE HARPER: Mr. Chairman, I'd just like to
6 put in one more little lick. The reason I said it in the
7 first place--put a period there--without the showing of a com-
8 pelling state interest is not defined at least clearly in my
9 mind as to who must show the compelling interest, what it must
10 be and who decides what it must be. Section eleven deals with
11 search and seizures, puts a limit on the -- a limitation on the
12 kind of invasion of privacy that the government can legally do.
13 I guess I'm just not that worried about the state taking care
14 of itself as I am worried about the individual being able to
15 take care of his own privacy.

16 CHAIRMAN GRAYBILL: Mr. Kelleher.

17 DELEGATE KELLEHER: Mr. Chairman, I think that with
18 the words, without the showing of a compelling state interest,
19 that the thing is made meaningless -- with the addition of those
20 words, it's meaningless.

21 CHAIRMAN GRAYBILL: Very well, the issue is on Mr.
22 Ask's motion that we add back in the words, without the show-
23 ing of a compelling state interest. So many as shall be in
24 favor of that motion, say Aye.

25 DELEGATES: Aye.

1 CHAIRMAN GRAYBILL: Opposed, No.
2 DELEGATES: No.
3 CHAIRMAN GRAYBILL: The Ayes have it and it's adopt-
4 ed. Mr. Dahood, do you want to move section ten for me?
5 DELEGATE DAHOOD: Mr. Chairman, I move that when
6 this committee does rise and report, after having had under
7 consideration section ten as now amended, that it recommend
8 the same be adopted.
9 CHAIRMAN GRAYBILL: So many as shall be in favor of
10 that motion say Aye.
11 DELEGATES: Aye.
12 CHAIRMAN GRAYBILL: Opposed, No.
13 DELEGATES: No.
14 CHAIRMAN GRAYBILL: So ordered.
15 Mr. Murray.
16 DELEGATE MURRAY: Mr. Chairman, I move that the
17 committee rearrange its calendar by passing the consideration
18 of all other matters before General Orders at this sitting of
19 the committee.
20 CHAIRMAN GRAYBILL: The motion is to pass all other
21 matters on General Orders. All in favor say Aye.
22 DELEGATES: Aye.
23 CHAIRMAN GRAYBILL: Opposed, No.
24 DELEGATES: (No audible response)
25 CHAIRMAN GRAYBILL: Mr. Murray.

1 DELEGATE MURRAY: Mr. Chairman, I move the committee
2 rise and finally report.

3 CHAIRMAN GRAYBILL: The motion is that this commit-
4 tee rise and finally report.

5 Mrs. Babcock.

6 DELEGATE BABCOCK: Mr. Chairman, could I have the
7 record show that I made a mistake in not voting to put the
8 death penalty on the ballot? I'd like to show that I was in
9 favor of that, please.

10 CHAIRMAN GRAYBILL: Very well, the record now shows
11 that. The motion is to rise and finally report. All in favor
12 say Aye.

13 DELEGATES: Aye.

14 CHAIRMAN GRAYBILL: Opposed.

15 DELEGATES: (No audible response)

16 CHAIRMAN GRAYBILL: So ordered. Now, if you'll
17 just wait until it's ready, we'll do that.

18

19 (Proceedings moved from Committee of the
20 Whole to Convention. President Graybill
in Chair.)

21 PRESIDENT GRAYBILL: Since it's getting late, the
22 Chair would like to make an announcement or two while we are
23 waiting for it to be printed. Please understand that John
24 Gardiner, the ex-secretary of Health, Education and Welfare,
25 is in town and will be addressing us in this Convention Hall

1 Hall at eight P.M. tonight. This is on our distinguished
2 speakers series, as you know, and there is a cocktail hour
3 that begins awfully quickly if you want to get there. We'll
4 try and adjourn in time. It's at the Colonial Club. Other
5 than that, we'll expect to see you back, if you'd like to hear
6 Mr. Gardiner, at eight o'clock tonight, but not until we adjourn.
7 Mr. Harbaugh -- just a moment.

8 Mr. Harbaugh.

9 DELEGATE HARBAUGH: Mr. Chairman, might we be ad-
10 vised what the schedule will be tomorrow?

11 CHAIRMAN GRAYBILL: Well, tomorrow we're going to
12 start on Style and Drafting and I think -- and we also have
13 section -- and we also have some matters up on Order of Busi-
14 ness Number Five, the General Government matter that we thought
15 we'd get to today -- General Government and Legislature on
16 Order of Business Number Five. Style and Drafting Judiciary
17 I think is not up because it has not been there long enough,
18 and after we finish Style and Drafting -- finish Order of Bus-
19 iness Number Five, I presume we'd be on Education, which is
20 next up.

21 Mr. Foster.

22 DELEGATE FOSTER: Mr. Chairman, does the Chair have
23 either an inkling or an indication on what the schedule -- if
24 we will be working Monday or whether there's a possibility, or--

25 CHAIRMAN GRAYBILL: There's a possibility, but the

1 Chair -- we're only one day behind now, but I am hoping we
2 won't be one day behind after another day or so, or two days.
3 The Chair really wouldn't know until probably as late as Friday
4 --Friday night. We are one day behind, as you all know now,
5 plus some Style and Drafting.

6 DELEGATE FOSTER: Thank you, Mr. Chairman.

7 PRESIDENT GRAYBILL: So, I think there is a chance
8 we might work Monday, yes. Will the Clerk please read the
9 Committee of the Whole report?

10 CLERK HANSON: (Reading) March 9, 1972. Mr. Pres-
11 ident, we your Committee of the Whole, having had under con-
12 sideration report number eight of the Committee on Bill of
13 Rights recommend as follows: That the committee pass consider-
14 ation of other business on General Orders; that the committee
15 rise and report. Signed Graybill, chairman. (End reading)

16 PRESIDENT GRAYBILL: Is there anyone who wants the
17 Committee of the Whole report read in its entirety?

18 (No response)

19 PRESIDENT GRAYBILL: If not, we'll pass that.

20 Mr. Murray.

21 DELEGATE MURRAY: Mr. President, I move we adopt the
22 Committee of the Whole report and refer the Bill of Rights
23 proposal number eight to the Committee on Style and Drafting.

24 PRESIDENT GRAYBILL: The motion is to adopt the
25 Committee of the Whole report and refer this Bill of Rights

1 article to Style and Drafting. All in favor say Aye.

2 DELEGATES: Aye.

3 PRESIDENT GRAYBILL: Opposed, No.

4 DELEGATES: (No audible response)

5 PRESIDENT GRAYBILL: So ordered.

6 Mr. Eskildsen.

7 DELEGATE ESKILDSEN: Mr. President, I move we adjourn
8 until Friday, March tenth, 1972, nine A.M.

9 PRESIDENT GRAYBILL: The motion is to adjourn until
10 tomorrow morning at nine A.M. All in favor say Aye.

11 DELEGATES: Aye.

12 PRESIDENT GRAYBILL: Opposed, No.

13 DELEGATES: (No audible response)

14 PRESIDENT GRAYBILL: Thank you. So ordered.

15
16 (Convention adjourned at 6:00 P.M.)
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